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STATE OF MICHIGAN

THE JUDICATURE ACT

OF

1915

AND

OTHER ACTS AFFECTING PRACTICE
AND PROCEDURE

PASSED AT THE
REGULAR SESSION OF 1915



COMPILED BY
COLEMAN C. VAUGHAN
SECRETARY OF STATE

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
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Note.—The words and sentences inclosed in brackets in the following acts were in the bills as passed by the Legislature, but not in the enrolled copy as approved by the Governor. It should, however, be borne in mind that under a decision of the Supreme Court, 57 Mich. 128, "Bracketed words, which were not in the law as approved by the Governor, have no proper place in the statute."

[No. 314.]

AN ACT to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this State; the powers and duties of such courts, and of the judges and other officers thereof; the forms of civil actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act.

The People of the State of Michigan enact:

SECTION 1. This act shall be shown [known] and may be cited as "The Judicature Act of nineteen hundred fifteen." Act how known.

SEC. 2. This act is hereby declared to be remedial in character, and as such shall be liberally construed to effectuate the intents and purposes thereof. Remedial; construction.

CHAPTER I.

Of the Organization and Powers of the Supreme Court.

SECTION 1. The supreme court shall consist of a chief justice, and seven associate justices, to be chosen by the electors of this State. The present justices of said court shall be justices thereof, until the expiration of their respective terms of office. Of whom court to consist.

SEC. 2. At the election to be held in the several townships and cities of this State, on the first Monday of April, nineteen hundred and seventeen, and every two years thereafter, there shall be elected two justices of the supreme court, to hold their offices respectively for the term of eight years from and after the first day of January next succeeding such election. When justices elected.

SEC. 3. Such justices shall be voted for on the same ballot as circuit judges and regents of the university, and all the provisions of law then existing relating to election of circuit judges, so far as applicable, and the making of the county and State canvasses therefor, and certifying the result thereof, shall be applicable in the case of justices of the supreme court. How voted for.

SEC. 4. Whenever a vacancy shall happen in the office of justice of the supreme court, it shall be filled by appointment of the Governor, and a successor shall be elected at the next general April or November election. Vacancy, how filled.

SEC. 5. Five justices shall be sufficient to form a quorum for the hearing of cases and for the transaction of business. Quorum.

Jurisdiction and powers.	and the court shall have the jurisdiction and powers conferred by the constitution and laws of this State. Parties to proceedings pending in the supreme court shall be entitled to
Oral hearing.	an oral hearing in all calendar causes and upon all motions involving constitutional questions and personal liberty. When-
Rehearing.	ever there shall be filed a dissenting opinion in a case heard by a quorum of five justices only, the parties therein shall have
Chief justice.	a right to a rehearing before the entire bench upon making a proper application therefor. The powers and duties apper-
Proviso, seniority in years.	taining to the office of chief justice of the supreme court shall devolve, from time to time, upon the two justices of that court whose term of office shall soonest expire by its own limi-
Terms of court.	tations; the justice having served the longest time in said court shall discharge such duties during the year next pre-
Where held. Special or adjourned terms.	ceding the last year of his term, and the justice having served the shortest time in said court shall discharge such duties during the last year of his said term: <i>Provided, however,</i> In case the said two justices have served the same length of time in said court, then the justice senior in years shall discharge such duties during the year next preceding the last year of his term, and the justice junior in years shall discharge such duties during the last year of his term. Four terms of the supreme court shall be held annually, commencing Tuesday after the first Monday of January, April, June and October, which shall be called respectively the January, April, June and October terms of said court. All the terms of said court shall be held at the supreme court room in the city of Lan-
Salary.	sing, in the county of Ingham. The court may hold special or adjourned terms, and shall continue its sessions a sufficient number of days at each term to hear all the causes ready for hearing, and all causes and questions not decided at the term when the same are submitted shall be determined early in the next succeeding term.
One justice to be at seat of government.	SEC. 6. Each justice of the supreme court shall receive an annual salary of seven thousand dollars, payable out of the moneys of the State treasury, belonging to the general fund, not otherwise appropriated.
Oath of office.	SEC. 7. At least one justice shall at all times be at the seat of government, and all justices who have their residences elsewhere than in Lansing, shall pay their own traveling expenses between their homes and Lansing.
Superintending control.	SEC. 8. Before entering upon the discharge of their duties, the several justices shall take and subscribe the oath required by the constitution.
Certiorari or writ of error.	SEC. 9. The supreme court shall have a general superintending control over all inferior courts, to prevent and correct errors and abuses therein, where no other remedy is expressly provided by law, and shall have also jurisdiction of suits, actions and matters brought before it by writ of certiorari or writ of error, when the same shall be allowed by law to any inferior court, to magistrates and other officers, as well in cases of prosecution for any offense, misdemeanor or

penalty, in the name of the people of this State, as in other cases, and by certificate of any circuit judge of any cause pending or tried before him, or by a case made and agreed upon by the parties or their attorneys, in any circuit court, and certified by the clerk of such circuit court, and shall have power to issue writs of error, certiorari, habeas corpus, mandamus, quo warranto, procedendo, prohibition, super-sedeas, and all other original and remedial writs which may be necessary for the due execution of the law and the administration of justice, and the full and perfect exercise of its jurisdiction, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.

Case made.

Other writs.

Appellate jurisdiction.

SEC. 10. At any of the general terms of said court, it shall exercise its appellate jurisdiction in suits, in equity and at law, and in probate cases originating in any part of this State.

When to exercise appellate jurisdiction.

SEC. 11. Upon all questions arising under the exercise of such jurisdiction, when argument of counsel may be desired or intended by the parties, or may be requested by the court, the court may order such arguments to be had at any of said terms. And after the arguments of any cause, or when the same is submitted on briefs, if the court is of opinion that [a] certain point or legal proposition is involved which is material to the decision of the case, and which has not been raised or argued by counsel on either side, the case shall not be decided on such point or proposition until both counsel have had an opportunity to argue the same before the court.

Arguments of counsel.

Point not raised.

SEC. 12. If neither of said justices shall attend on the first day of any term of said court, it shall be the duty of the clerk thereof, at any time after four o'clock in the afternoon of such day, to open the said court by proclamation, and immediately to adjourn the same to the next day; and so to open and adjourn the said court from day to day, until the judges thereof, or one of them, shall appear, when the court shall proceed to business, if a quorum be present, as if it had been opened and adjourned by a judge thereof.

Absence of justices.

SEC. 13. If a quorum of said justices shall not attend, the justice or justices attending may, in his or their discretion, adjourn the said court from day to day, until a quorum shall be present; or, if it be deemed proper, the said court may be adjourned without day; and if no justice shall attend before the expiration of the third day in term, the clerk shall adjourn said court without day.

When quorum not present.

Adjournment.

SEC. 14. The justices of the supreme court shall have power, and it shall be their duty, by general rules to establish, and from time to time thereafter to modify and amend, the practice in such court, and in all other courts of record, in the cases not provided for by any statute; and they shall, once at least in every two years thereafter, if necessary, revise the said rules, with the view to the attainment, so far as may be practicable, of the following improvements in the practice:

Power to amend practice in courts.

Revision of rules.

Improvements to be attained.

1. The abolishing of distinctions between law and equity proceedings, as far as practicable;
2. The abolishing of all fictions and unnecessary process and proceedings;
3. The simplifying and abbreviating of the pleadings and proceedings;
4. The expediting of the decisions of causes;
5. The regulation of costs;
6. The remedying of such abuses and imperfections as may be found to exist in the practice;
7. The abolishing of all unnecessary forms and technicalities in pleading and practice;
8. To effectually prevent the defeat or abatement of any civil suit, ex contractu, for either any nonjoinder or misjoinder of parties, where the same can be done consistently with justice;
9. To provide for all necessary amendments of process, pleadings or other proceedings in such case; and
10. To provide the manner by which a discontinuance may be entered against parties improperly joined in any suit, and by which parties improperly omitted may be joined in the suit and brought in to answer thereto, if within the jurisdiction of the court.

Style of writs and process.

SEC. 15. All writs and process issuing out of said court shall be styled "In the Name of the People of the State of Michigan," and shall run into and be executed in any county of the State; and the seal of said court affixed thereto, or impressed upon any writ or process, in any suit or proceeding therein, shall be conclusive evidence that such writ or process was issued by said court, in all cases where such writ or process may be lawfully issued.

Where executed.

Seal to be conclusive evidence.

Forms of process.

SEC. 16. The supreme court shall have authority to prescribe from time to time, the forms of all process to be issued out of the circuit courts at law and in chancery, and until other forms are prescribed, those now in use may be continued, so far as they may be applicable.

Power to compel production of books, etc.

SEC. 17. The supreme court shall have power, in all such cases as shall be deemed proper, to compel any party to a suit pending therein, to produce and discover books, papers and documents in his possession or power, relating to the merits of any such suit, or of any defense therein.

General rules for discovery.

SEC. 18. The court shall, by general rules, prescribe the cases in which such discovery may be compelled, where the same are not herein provided, and the costs of such proceedings shall always be awarded in the discretion of the court.

Costs.

Order for discovery.

SEC. 19. To entitle a party to any such discovery, he shall present a petition to the court, or to any justice in vacation, verified by oath, upon which an order may be granted by the court or such justice, for the discovery sought, or that the party against whom the same is sought show cause why the prayer of such petition should not be granted.

SEC. 20. Every such order may be vacated by the justice granting the same or by the court: When order may be vacated.

1. Upon satisfactory evidence that the same ought not to have been granted;

2. Upon the discovery sought being made;

3. Upon the party required to make the discovery denying, on oath, the possession or control of the books, papers or documents ordered to be produced.

SEC. 21. The court shall provide, by general rules, for the staying of proceedings in any case where such discovery shall have been ordered, until such order shall have been complied with or vacated. Staying proceedings.

SEC. 22. In case any party refusing or neglecting to obey any such order for discovery within such time as may be deemed reasonable, the court may nonsuit him, or may strike out any plea or notice he may have given, or may debar him from any particular defense in relation to which such discovery is sought; and the power of the court to compel such discovery shall be confined to the remedies herein provided, and shall not extend to authorize any other proceeding against the person or property of the party so refusing or neglecting. Refusal to obey order.
Power to compel discovery, how limited.

SEC. 23. The books, papers and documents produced under any order made in pursuance of the preceding sections, shall have the same effect, when used by the party requiring them, as if produced upon notice, according to the practice of the court. Effect of production of books, etc.

SEC. 24. The supreme court shall, amongst other things, regulate and prescribe the practice therein, and in the circuit courts, where the same is not prescribed by any statute, in relation to bills of exceptions, cases made by the parties, special verdicts, granting new trials, motions in arrest of judgment, taxation of costs, giving notice of special motions, and of such other proceedings as the court may think proper; staying proceedings when necessary to prevent injustice, and the hearing of motions, imposing terms, in their discretion, on granting such motions. Supreme court to regulate practice.

SEC. 25. In cases not otherwise provided for, the supreme court shall have power, from time to time, by general rules, to prescribe the cases in which the circuit courts, or any judge thereof, or circuit court commissioner, may grant orders to stay proceedings in causes and matters pending in the circuit courts, and upon process issued therefrom, the effect of such orders, and the terms and conditions on which they shall be granted. Granting of orders to stay proceedings in circuit courts, etc.

SEC. 26. When the justices of the supreme court shall be equally divided in opinion upon any case submitted to them, brought before said court by appeal, certiorari, or writ of error, the judgment or decree of the court below shall be affirmed. Equal division of justices.

SEC. 27. No justice of the supreme court shall practice as attorney or counselor in any court of this State. No justice to practice as attorney.

Seals. SEC. 28. The seals of the supreme court now in use shall continue to be used therein; and with such other seals as may be devised for that purpose according to law, shall be the seals of said court.

Testimony in open court. SEC. 29. The supreme court may, at any time, in accordance with and for the speedy furtherance of justice in any suit, either at law or in equity, call upon the parties to such suit, or any witness thereto, to testify orally in open court; and said court may, by rule, provide for a similar practice in the circuit courts. But no party or witness whose evidence may not be received under the statutes of the State shall be called upon to testify under the provisions of this section.

Decisions. SEC. 30. The decisions of the supreme court, with the reasons therefor, shall be in writing, and signed by the justices concurring therein. Any justice dissenting therefrom shall give the reasons of such dissent in writing, over his signature; and such opinions shall be filed in the office of the clerk of the supreme court, and copies thereof shall at the same time be delivered to the reporter of said court.

Dissenting opinions.

Of the Clerk of the Supreme Court.

Appointment. SEC. 31. The supreme court may appoint a clerk of said court who shall hold his office during the pleasure of said court. Such clerk shall take the constitutional oath of office and shall perform such duties as may be required by law or by the court. It shall be the duty of the clerk to collect all fees of his office provided for either by statute or the rules of court, and pay the same monthly into the State treasury, taking the treasurer's receipt therefor, which receipt the clerk shall file in his office. The bond required by law to be given by said clerk, when approved, shall be filed in the office of the Secretary of State and the cost thereof shall be paid by the Board of State Auditors. Said clerk shall be an attorney duly admitted to practice before the bar of said court.

Term; oath.

Duties.

Bond.

Salary. SEC. 32. The clerk of the supreme court shall receive a salary of five thousand dollars per annum and his actual and necessary expenses for clerk hire, to be fixed by the court. He may also appoint a deputy with the approval of the court who shall receive such salary as the court may fix. Said deputy shall be an attorney duly admitted to practice before the bar of said court. The compensation of such clerk, together with the other expenses of the office as herein provided, shall be paid monthly out of the general fund in the State treasury on vouchers to be approved by a justice of the court.

Deputy.

Compensation, how paid.

Care of records, etc. SEC. 33. The clerk of the supreme court shall have the care and custody of all the records, seals, books and papers appertaining to his said office, and filed or deposited therein; and shall perform all such other duties relating to his office as are required of him by law, or by the rules and practice of the court.

SEC. 34. Whenever the clerk of the supreme court shall be absent from his office, or from the place where any official duty is required to be performed by him, or shall be incapable of performing the duties of his office, and whenever his office shall be vacant, his deputy so appointed and qualified may perform the duties of such office, during such absence, inability or vacancy.

When deputy
to perform
duties.

SEC. 35. The clerk of the supreme court shall provide such books for entering proceedings in said court as the justices thereof shall direct.

To provide
books.

SEC. 36. The clerk of the supreme court of this State before entering upon the duties of his office, and within ten days after his appointment to such office, shall give a bond to the people of the State of Michigan, in the penal sum of five thousand dollars, to be approved by the chief justice of the supreme court, for the faithful discharge of the duties of his office. Such bond shall be in each instance for the period of five years, and shall be renewed at all events at the expiration of that time, but the supreme court may require a new or additional bond at any time.

Bond of
clerk.

Renewal.

SEC. 37. The condition of such bond shall be in substance as follows:

Condition
of bond.

WHEREAS, The above bounden, hath been duly appointed by the supreme court to the office of clerk of the supreme court: Now, therefore, the condition of the above obligation is such, that if the said shall for the period of five years, if he shall so long continue in office, faithfully, truly and impartially enter and record all orders, decrees, judgments, and proceedings of said supreme court, and shall faithfully and impartially perform all other duties of his said office, and shall pay over all moneys that may come into his hands as such clerk, and shall deliver over to his successor in office, all the books, records, papers, seals and other things belonging to said office, then the above obligation to be void, otherwise to remain in full force.

Of the State Reporter.

SEC. 38. The supreme court shall appoint, as often as any vacancy shall occur, a person of known integrity, experience, and learning in the law, reporter of the decisions thereof, to be called the State reporter, who shall hold his office during the pleasure of said court.

Appointment.

Term.

SEC. 39. The State reporter, before entering upon the duties of his office, shall take and subscribe the constitutional oath of office before one of the justices of said court, who shall cause the same to be filed in the office of the Secretary of State, and shall give his bond to the State, with two sufficient sureties, to be approved by said court, in the sum of three thousand dollars, conditioned for the faithful performance of his official duties with correctness and impartiality.

Oath.

Bond.

Duty of reporter.

SEC. 40. It shall be the duty of the State reporter to faithfully and correctly prepare all the decisions of such court for publication in volumes of not less than seven hundred nor more than seven hundred and fifty pages each, and cause the same to be published as often as sufficient matter for such volume shall be filed by such court, and within sixty days after the filing of the same, and he shall report and publish in such volumes the decisions of the court, and any dissenting opinion that may be filed, together with a brief statement of the facts of each case, and the points made and authorities cited by counsel therein.

Salary.

SEC. 41. The State reporter shall receive an annual salary and his actual and necessary expenses for clerk hire, to be fixed by the supreme court from time to time as the needs of his office demand; which salary and expenses for clerk hire shall be paid monthly, upon a warrant of the Auditor General upon the State Treasurer, approved by the chief justice of the supreme court, and shall be paid out of the general fund. Whenever any State reporter shall be removed from office or shall resign, his successor in office shall have the right of possession of all books and papers in the hands of such reporter, by virtue of his office, at the date of such removal, or at the time such resignation shall take effect.

Removal or resignation.**Of the Crier.****Appointment. Term; duties.**

SEC. 42. The supreme court may appoint a crier for said court, who shall hold his office during the pleasure of the court. He shall have sole charge of the supreme court room and of the rooms assigned to the justices of the supreme court in the capitol, and shall perform such other duties as shall from time to time be required by the said court. The said crier, may with the consent of the court appoint an assistant crier, and shall perform such duties as shall be prescribed by the court. Said crier and assistant crier shall receive such salary as may be fixed by the justices of the supreme court, to be paid at the same time and in the same manner as the salaries of other State officers are paid.

Assistant.**Salaries.****Bond.****Powers.****Fees.**

SEC. 43. The person so appointed crier shall, upon filing with the clerk of said court such bond as is required by law to be given by sheriffs, to be approved by the chief justice of said court, have power to serve all orders, processes or writs issued from said court, and shall collect for such service the fees allowed by law to sheriffs. Any and all fees collected by the crier shall be paid into the State treasury to be accredited to the general fund.

Salaries.**Tax clause.**

SEC. 44. The salary of the crier and of the assistant crier shall be paid by the State Treasurer monthly out of any money in the general fund in the State treasury not otherwise appropriated, in the manner provided for the payment of salaries of other State officers. The Auditor General shall incorporate in the State tax for the year nineteen hundred

sixteen and every year thereafter a sufficient amount to reimburse the general fund in the State treasury for the amounts appropriated by this section.

Of Clerical Help.

SEC. 45. Each of the justices of the supreme court is hereby authorized to employ necessary clerical help to assist him in the performance of such clerical work in connection with his office as he may deem expedient, not exceeding an expense aggregating one thousand dollars for each justice in one year. Clerical help.
Expense limit.

SEC. 46. Such help shall be paid by the Auditor General on a bill rendered by the person so employed and the certificate of either of said justices that the work charged for has been performed for the State of Michigan at the request of such justice. How paid.

SEC. 47. There shall be, and is hereby appropriated out of the money in the treasury to the credit of the general fund, and not otherwise appropriated, for each year hereafter, the sum of eight thousand dollars for the purpose of paying for the clerical help provided for in section forty-five of this chapter: *Provided*, That any money hereby appropriated for any year and not used shall at the end of such year, be transferred by the treasurer to the credit of the general fund. Appropriation.
Proviso, transfer of balance.

Of Attorneys and Counselors.

SEC. 48. All licensed practitioners before the courts of this State shall be hereafter designated as "attorneys and counselors." Designation.

SEC. 49. Any practicing attorney resident of another state or territory of the United States or of a foreign country may be admitted on motion, by the court, to try a certain case in such court; but shall not be admitted to the general trial of cases in such court or to the general practice of the law in this State without complying with the provisions of this chapter. Admission of foreign attorneys.

SEC. 50. Any person being a citizen of this State or a citizen of one of the other states or territories of the United States who proves to the satisfaction of the Board of Examiners that it is his intention to maintain an office in this State for the practice of the law and to practice in this State, who has been admitted and licensed to practice in the court of last resort of a state or territory of the United States, or in the District of Columbia, and whose principal business for three years or more immediately preceding his application for admission has been the practice of the law in the courts of record in such state, territory or district, may be admitted to the general practice of the law in this State on complying with the terms of this section as follows: He shall file his application with the Board of Examiners showing his qualifications as above prescribed together with the written Admission to general practice.
Application.

Fee.	recommendation of one of the judges of one of the courts named above in this section as to character, education and ability, and a certified copy of the certificates, affidavits and other papers not including examination questions and answers which were submitted upon his application for admission in such aforesaid state or territory. He shall pay to said board at the time of filing his application the same fee required by other applicants under this chapter. On the filing of such application, together with such recommendation, such Board of Examiners shall make an independent investigation into the qualifications of such applicant, mental and moral, and his standing as a citizen and an attorney in the state or territory in which he was so admitted to practice law, and if the board is satisfied that the applicant has been so admitted and is licensed to practice in such court or courts above mentioned and is of good moral character and has practiced law for three years prior to the filing of such application and possesses the qualifications as to general education and good moral character required for the practice of law in this State as provided in section fifty-three of this chapter, such board shall certify its findings to the supreme court of this State, and the supreme court may, in its discretion, on the filing of such certificate of such Board of Examiners and on motion made by some member of the bar of said court, if said supreme court is satisfied as to the qualifications of such applicant, admit him to the general practice of law in all the courts of this State.
Investigation into qualifications.	
Certification of findings.	
Board of law examiners.	SEC. 51. There shall be a Board of Law Examiners, consisting of five members, to be constituted as follows: The Governor shall on the nomination by the supreme court and on or before the first day of July in each year appoint a member of said board for the term of five years. The Board of Examiners now in existence shall continue and the terms of the members thereof shall expire as provided in the act under which they were severally appointed. Such board shall meet at the capitol, in the city of Lansing, at least once in each year during the session of the supreme court, and also at other times and places in the State, if the supreme court shall so direct, for the purpose of examining all applicants for admission to the bar as to their general education, legal learning and general qualifications to practice in the several courts of this State as attorneys and counselors, and upon such examination being had, the board shall issue to each of the applicants who shall pass the required examination a certificate of qualification stating his standing and recommending his admission to the bar. Such board shall elect from its members a secretary and a treasurer, and shall make rules and regulations relative to such examination and to the conduct and performance of its duties under this chapter, which rules shall take effect upon approval by the supreme court. The president of said board shall be the member whose term of office shall first expire. Three members of the board shall
Appointment.	
Meetings.	
Examinations.	
Certificate of qualification.	
Secretary, etc.	
Rules.	
President.	
Quorum.	

constitute a quorum for the transaction of business. The present rules of the board shall remain in effect until altered as provided herein.

SEC. 52. Any person of legal age, who is a resident and citizen of the United States, who has had the general education prescribed in section fifty-three of this chapter and who is of good moral character, may be admitted to practice as an attorney and counselor in all the courts of record of this State on motion made in the supreme court or any circuit court of the State, but the applicant shall first produce the certificate provided for in section fifty-one of this chapter, from the board of examiners, that he possesses sufficient learning in the law, good moral character and ability to enable him to properly practice as an attorney and counselor in the courts of this State: *Provided*, That in case of admission to practice by the circuit court the clerk of said court shall forthwith send a transcript of the record of such admission to the clerk of the supreme court, whose duty it shall be to enter the name of the attorney so admitted on the roll of attorneys of said court. No person shall be entitled to practice as an attorney and counselor in this State until he shall be licensed to do so by said courts. No person shall be denied admission to practice as an attorney and counselor on account of sex.

Who may be admitted.

Proviso, admission in circuit court.

License to practice required.

Sex.

SEC. 53. Satisfactory evidence, as prescribed by the rules of the Board of Examiners, shall be produced by the applicant of his name, residence, citizenship, good moral character and the possession of a general education including the completion of a four years' high school course, or equivalent work, and that he has been a resident student for the period of three years in a duly incorporated college or university organized under the laws of this or any other state, or four years in a law office under the supervision of a reputable attorney in good standing, who shall prescribe and direct the course of study of such applicant, examining him at regular intervals and certifying as to the work done, the books studied and the proficiency attained by the applicant. A fee to be fixed by a rule of the board of not more than fifteen dollars shall accompany the application. Proof of the possession of the general education hereinbefore prescribed may be made by presenting a diploma of graduation from the liberal arts or corresponding department of any reputable college or university, or of a State normal school of this State, or of a high school of this State requiring four years' course including at least fifteen units of work of the high school grade, or of a reputable institution of similar character and with equivalent requirements of this or any other State. Graduates of reputable law schools (or others who have completed the regular course of study in such schools) requiring a three years' course for graduation and a four years' high school course, or its equivalent, for admission, may in lieu of the foregoing certificates present a certificate from the law school from which the applicant has been graduated, which certifi-

Requirements for admission.

Fee.

General education.

Graduates of law schools.

Examination
by board.

Subjects.

Study with
attorney.

Proviso,
graduate of
certain
schools.

Further
proviso,
high school
course, de-
ficiency.

Examination
papers, etc.

Re-examina-
tion.

Fees.

cate shall show in detail the high school work, or its equivalent, upon which said applicant was admitted to said law school, or that the applicant before admission was examined by said law school as to his preliminary education, and that the same was found upon such examination to be in fact equal to four years' high school course or its equivalent. The applicant shall be required to submit to a written examination prepared by said board, and also to such oral examination as the board may think proper. The subjects upon which applicants shall be examined shall be determined and published by the said Board of Law Examiners, who shall also make and publish rules and regulations concerning the conduct of said examination and the scholarship grades to be obtained. No person who has not completed the regular course of study of a reputable law school with a three years' course shall be eligible to the examinations for admission to the bar, unless at least four years before he takes such examinations he has filed with the secretary of the Board of Law Examiners a statement supported by his affidavit, and that of the attorney under whom he proposes to study, to the effect that he is beginning the study of law with said preceptor, giving the name and address of the same, and that he proposes to apply for admission to the bar when eligible: *Provided*, That any person actually enrolled in the department of law of the University of Michigan, Detroit College of Law or the law Department of the University of Detroit prior to the fifteenth day of August, nineteen hundred thirteen, and who shall have completed the full prescribed law course in and have been graduated from the law department of any of the above mentioned institutions shall be admitted to practice at the bar of all the courts of this State upon the production of a diploma authenticated by the proper officers and duly sealed by the said University of Michigan, Detroit College of Law or the University of Detroit: *Provided further*, That a student may enter any reputable law school without credits for a full high school course or its equivalent if he is deficient not more than twenty-five per cent of such high school course or its equivalent, and he makes up such deficiency before the beginning of the third year of his law course.

SEC. 54. The examination papers shall be kept on file in the office of the secretary of the board, and a record of such application and the name of the applicant and his qualifications and general standing as ascertained by each examination, and the secretary of the board shall furnish each applicant with a card, showing the proficiency he has attained in each branch or subject upon which he has been examined, whether a certificate is issued or not. Any applicant failing to pass the examination may again apply after six months by showing to the board that he has diligently pursued the study of law six months prior to the examination, and he shall not be required to pay an extra fee for the second examination. For each subsequent examination the applicant shall pay to the

said board a fee of ten dollars. No person shall be eligible to more than three examinations within a period of three years.

SEC. 55. The Board of Examiners shall receive as compensation for their services twenty-five dollars per day for the time actually spent and their necessary expenses incurred in the discharge of their duties as examiners in going to, holding and returning from such examinations; and the other necessary expenses of the board shall also be paid, all to be audited and certified by the clerk or one of the justices of the supreme court: *Provided, however,* That all compensation for services or expenses of the members of the board shall not exceed the amount received as fees from applicants. Any excess of fees received from applicants over the amount necessary to pay any sums for the future compensation and expenses of the members of said board and the expenses of said board, shall be turned into the State treasury by the treasurer of said board on the first day of July of each year.

Compensation of board.

Expenses.

Proviso, limit of expense.

Disposition of excess.

SEC. 56. Every person admitted to practice as an attorney and counselor shall take the constitutional oath of office in open court, and subscribe the same in a roll or book to be kept by the clerk for that purpose.

Oath of office.

SEC. 57. Every person licensed to practice as an attorney and counselor in the supreme court, shall be authorized to practice in every court of law in this State.

Where may practice.

SEC. 58. Attorneys and counselors may be removed or suspended by the supreme or circuit courts in which they shall be authorized to practice.

Removal or suspension.

SEC. 59. Any attorney and counselor may be removed or suspended, who shall be guilty of any deceit, malpractice, crime or misdemeanor; but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him to be heard in his defense.

Causes.

Charges.

SEC. 60. The removal or suspension of any attorney and counselor by any court of competent jurisdiction, shall operate as a removal or suspension in every court of this State, and any person so removed or suspended, who shall, while such disability exists, hold himself out to the public or represent himself to any person as authorized to practice in any of the courts of this State, or who shall practice or attempt to practice, or appear as attorney or counselor for any party other than himself in any of said courts, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment, in the discretion of the court.

Effect of removal or suspension.

Penalty for practicing.

SEC. 61. It shall be unlawful for any person who is not a regularly licensed attorney and counselor of this State, or who is suspended or disbarred from practice, to represent

Unlawful to practice without license.

	himself as an attorney at law, or to use any sign, letter head, return envelope, or writing, printing or advertising of any kind whatever in or by which he designates or represents his place of business as a law office or himself as a lawyer, attorney at law, counselor, or in any way represent to the public that he is an attorney at law, or his place of business a law office; or to make any representations to any person or persons, either spoken or written, intended to lead such person or persons to believe that the person making such representations is an attorney at law: <i>Provided</i> , That this section shall not apply to licensed attorneys of other states while temporarily in this State.
Proviso, attorneys of other states.	
Penalty.	SEC. 62. Any person violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars and costs of prosecution, or by imprisonment in the county jail for a period of not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.
Death, etc., of attorney.	SEC. 63. When an attorney shall die, be removed or suspended, or cease to act as such, the person for whom he was acting shall be notified to appoint another attorney at least thirty days before any proceeding shall be had against such person, in the matter wherein such attorney was acting for him.
Deceit, etc., by attorney.	SEC. 64. Any attorney or counselor who shall be guilty of any deceit or collusion, or shall consent to any deceit or collusion, with intent to deceive the court or any party, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months, or both, in the discretion of the court, and shall also be liable to the party injured by such deceit or collusion, in treble damages sustained, to be recovered in a civil action.
Penalty.	
Delay of suit.	SEC. 65. If any attorney or counselor shall wilfully delay his client's suit, with a view to his own gain, or shall wilfully receive any money or allowance for, or on account of any money which he has not laid out or become accountable for, he shall be liable to the party injured in treble damages.
Process not to be made out in attorney's name, etc.	SEC. 66. If any attorney shall knowingly permit any person, not being his general law partner or a clerk in his office, to sue out any process, or to prosecute or defend any action in his name, such attorney, and every person who shall so use the name of any attorney, shall severally be liable to the party against whom such process was sued out, or such action prosecuted or defended, in the sum of fifty dollars damages.
Purchase of note, etc., to sue.	SEC. 67. No attorney or counselor shall, directly or indirectly, buy, or be in any manner interested in buying, any bond, promissory note, bill of exchange, book debt or other thing in action, with the intent and for the purpose of bringing any suit thereon.
Penalty.	SEC. 68. Every attorney or counselor who shall violate the

last preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or both, in the discretion of the court; and he shall be removed from office in the several courts in which he is authorized to practice.

SEC. 69. Nothing contained in either of the two last preceding sections shall be construed to prohibit the receiving in payment, by any attorney or counselor, any bond, promissory note, bill of exchange, book debt, or anything in action, for any estate, real or personal, or for services actually rendered, or for a debt antecedently contracted; or from buying or receiving any bill of exchange, draft, or other thing in action, for the purpose of remittance, and without any intent to violate either of the two last preceding sections.

Construction of last two sections.

SEC. 70. The defendant in any suit to be brought upon any demand which shall have been bought, sold or received in violation of the foregoing provisions, may give notice with his plea, in addition to any other matter of defense, that on the trial of the cause he will insist and prove that the demand on which such action is founded has been bought and sold contrary to law, without setting forth any other particulars.

Notice of defense.

SEC. 71. On the trial of the cause in which such notice shall have been given, if the defendant shall require it, the plaintiff, and his attorney and counsel, and any other person who may be interested in the recovery in such cause, shall be examined on oath touching the matters set forth in such notice.

Examination of plaintiff, etc.

SEC. 72. The defendant in such suit may cause the persons mentioned in the preceding section to be summoned as witnesses, to attend the trial; and if the plaintiff, or any other person interested in the recovery in such cause, and duly served with a subpoena for that purpose, shall fail to attend, unless such failure shall be accounted for to the satisfaction of the court; or shall refuse to answer on oath such questions as shall be pertinent to show a violation of the provisions of this chapter; or if, on such examination, it shall appear that the cause of action on which such suit was founded has been bought or procured contrary to the true intent of the provisions of this chapter, the plaintiff in such action shall be nonsuited.

May be summoned as witnesses.

Failure to attend.

Refusal to answer.

Nonsuit.

SEC. 73. No evidence derived from the examination of any such attorney or counselor shall be admitted in proof on any criminal prosecution against him, for violating any of the provisions of this chapter.

Evidence inadmissible in prosecution.

SEC. 74. All existing laws, rules and provisions of law restricting or controlling the right of a party to agree with an attorney or counselor for his compensation are repealed, and hereafter the measure of such compensation shall be left to the agreement, express or implied, of the parties; but any agreement by which any attorney or counselor is to receive any percentage or portion of the recovery in any cause, in consideration of his services therein, or in consideration of

Compensation of attorney.

When percentage agreement void.

his having advanced or paid all, or any portion of the expenses of such cause, shall be wholly void if such employment shall have been induced by the solicitation of such attorney or counselor, or any one acting in his behalf, or at his request, without such services having been first solicited by such party.

Attorney not
to become
bail, etc.

SEC. 75. No practicing attorney or counselor shall become security or bail for the appearance of any person charged with crime, in any criminal action, and any such security or bail for appearance, taken by a judge, circuit court commissioner, justice of the peace, or other officer authorized by law to take the same, shall be void.

Not to appear
in certain
suits.

SEC. 76. No person shall be employed or allowed to appear as counsel or attorney, before any court, in any suit which shall have been previously determined before himself, as a judge or justice of the peace.

Attorneys
as notaries.

SEC. 77. It shall not be lawful for notaries public who are attorneys and counselors to administer oaths in causes in which they may be professionally engaged.

CHAPTER II.

Of the Organization and Powers of the Circuit Courts.

Judicial Circuits.

State divided
into circuits.

SECTION 1. The State shall be subdivided into thirty-nine judicial circuits to be numbered consecutively from one to thirty-nine, and composed of the following counties, to-wit: The first circuit shall be composed of the county of Hillsdale.

First circuit.
Second.

SEC. 2. The second circuit shall be composed of the county of Berrien.

Third.

SEC. 3. The third circuit shall be composed of the county of Wayne.

Fourth.

SEC. 4. The fourth circuit shall be composed of the county of Jackson.

Fifth.

SEC. 5. The fifth circuit shall be composed of the counties of Barry and Eaton.

Sixth.

SEC. 6. The sixth circuit shall be composed of the county of Oakland.

Seventh.

SEC. 7. The seventh circuit shall be composed of the county of Genesee.

Eighth.

SEC. 8. The eighth circuit shall be composed of the counties of Ionia and Montcalm.

Ninth.

SEC. 9. The ninth circuit shall be composed of the county of Kalamazoo.

Tenth.

SEC. 10. The tenth circuit shall be composed of the county of Saginaw.

Eleventh.

SEC. 11. The eleventh circuit shall be composed of the counties of Chippewa, Schoolcraft, Luce and Alger.

Twelfth.

SEC. 12. The twelfth circuit shall be composed of the counties of Baraga, Houghton and Keweenaw.

Thirteenth.

SEC. 13. The thirteenth circuit shall be composed of the counties of Antrim, Charlevoix, Grand Traverse and Leelanau.

SEC. 14. The fourteenth circuit shall be composed of the Fourteenth. counties of Muskegon and Oceana.

SEC. 15. The fifteenth circuit shall be composed of the Fifteenth. counties of Branch and St. Joseph.

SEC. 16. The sixteenth circuit shall be composed of the Sixteenth. county of Macomb.

SEC. 17. The seventeenth circuit shall be composed of the Seventeenth. county of Kent.

SEC. 18. The eighteenth circuit shall be composed of the Eighteenth. county of Bay.

SEC. 19. The nineteenth circuit shall be composed of the Nineteenth. counties of Lake, Manistee, Mason and Osceola.

SEC. 20. The twentieth circuit shall be composed of the Twentieth. counties of Allegan and Ottawa.

SEC. 21. The twenty-first circuit shall be composed of the Twenty-first. counties of Clare, Isabella and Midland.

SEC. 22. The twenty-second circuit shall be composed of the Twenty-second. the county of Washtenaw.

SEC. 23. The twenty-third circuit shall be composed of the Twenty-third. the counties of Alcona, Iosco and Oscoda.

SEC. 24. The twenty-fourth circuit shall be composed of the Twenty-fourth. the counties of Huron, Sanilac and Tuscola.

SEC. 25. The twenty-fifth circuit shall be composed of the Twenty-fifth. counties of Marquette, Delta, Menominee, Iron and Dickinson.

SEC. 26. The twenty-sixth circuit shall be composed of the Twenty-sixth. counties of Alpena, Presque Isle and Montmorency.

SEC. 27. The twenty-seventh circuit shall be composed of the Twenty-seventh. the counties of Mecosta and Newaygo.

SEC. 28. The twenty-eighth circuit shall be composed of the Twenty-eighth. the counties of Kalkaska, Missaukee, Wexford and Benzie.

SEC. 29. The twenty-ninth circuit shall be composed of the Twenty-ninth. counties of Gratiot and Clinton.

SEC. 30. The thirtieth circuit shall be composed of the Thirtieth. county of Ingham.

SEC. 31. The thirty-first circuit shall be composed of the Thirty-first. county of St. Clair.

SEC. 32. The thirty-second circuit shall be composed of the Thirty-second. counties of Gogebic and Ontonagon.

SEC. 33. The thirty-third circuit shall be composed of the Thirty-third. counties of Mackinac, Emmet and Cheboygan.

SEC. 34. The thirty-fourth circuit shall be composed of the Thirty-fourth. counties of Arenac, Crawford, Gladwin, Ogemaw, Roscommon and Otsego.

SEC. 35. The thirty-fifth circuit shall be composed of the Thirty-fifth. counties of Shiawassee and Livingston.

SEC. 36. The thirty-sixth circuit shall be composed of the Thirty-sixth. counties of Van Buren and Cass.

SEC. 37. The thirty-seventh circuit shall be composed of the Thirty-seventh. the county of Calhoun.

SEC. 38. The thirty-eighth circuit shall be composed of the Thirty-eighth. county of Monroe.

- Thirty-ninth. **SEC. 39.** The thirty-ninth circuit shall be composed of the county of Lenawee.
- Fortieth. **SEC. 39a.** The fortieth circuit shall be composed of the county of Lapeer.

Eligibility to Office of Circuit Judge.

- Must be attorney. **SEC. 40.** No person shall be eligible to the office of circuit judge in this State, unless he be a regularly licensed attorney and counselor, duly admitted to practice in all the courts in this State.

Additional Judges.

- Third circuit—Detroit. **SEC. 41.** There shall be six circuit judges for the third judicial circuit, in which the city of Detroit is situated.

- Appointment of clerk. **SEC. 42.** In any circuit where there are three or more judges the Governor of the State may upon the recommendation of said judges appoint a clerk who may be removed in like manner and his successor appointed. The business of said clerk shall be to render such assistance as said judges may require in arranging the business of said courts. He shall receive a salary of two thousand five hundred dollars per annum, to be paid in monthly installments by the county or counties composing the circuit.
- Duties.
- Salary.

- Seventeenth circuit—Kent. **SEC. 43.** There shall be three circuit judges in the judicial circuit in which the county of Kent is, or may be situated, the same now being the seventeenth judicial circuit.

- Tenth circuit—Saginaw. **SEC. 44.** There shall be two circuit judges in the judicial circuit in which the county of Saginaw is or may be situated, the same now being the tenth judicial circuit.

- Thirtieth circuit—Ingham. **SEC. 45.** There shall be two circuit judges in the judicial circuit in which the county of Ingham is, or may be situated, the same now being the thirtieth judicial circuit.

- Thirty-first circuit—St. Clair. **SEC. 46.** There shall be two circuit judges in the judicial circuit in which the county of St. Clair is or may be situated, the same now being the thirty-first judicial circuit.

- Laws, rules, terms, etc. **SEC. 47.** In all judicial circuits where there is more than one circuit judge, except as otherwise provided by law, all the laws and rules of court, relative to circuit courts and the terms thereof, and the powers and duties of circuit judges shall apply to each of said judges, and the courts held by him.

- Powers, etc. **SEC. 48.** Each of said judges shall have equal co-ordinate powers and duties, and one of them shall constitute a quorum for the transaction of business.
- Quorum.

- Questions reserved for full court. **SEC. 49.** In circuits having more than two circuit judges, either of said judges may reserve for the decision of the full court any question of law arising before such judge, and it shall be the duty of the judges of said court to sit together on at least one day during each term and hear and decide upon such questions as may be so reserved.
- Sessions together.

SEC. 50. In circuits having more than two circuit judges, when sitting together, a concurrence of a majority of such judges shall be sufficient. Concurrence of majority.

SEC. 51. In all circuits where there are two judges they may, if they shall deem the same necessary, sit together in the hearing of trials, or causes, or on all questions coming before them, and either may reserve for the consideration of the other, any question of law arising upon the trial, or hearing, or that otherwise may be submitted. When sitting together the findings, orders, rulings, decisions, judgments or decrees, shall be made by the judge to whom the cause was assigned, and the other shall be advisory only. Business in joint session.

SEC. 52. In judicial circuits where there are more than two judges, the judges thereof shall from term to term designate one of their number to act as presiding judge, and in judicial circuits where there are only two judges, they shall alternate as presiding judge, either from term to term, or from year to year, as they may order. Presiding judge.

SEC. 53. The presiding judge shall assign and apportion the business of the court during his term as such presiding judge, and each judge shall proceed to hear, try and dispose of the business so assigned to him with the same force and effect as if he was the only judge of said circuit, and subject to and with the power and authority conferred by all the rules of practice, and of law applicable to circuit courts having only one judge, and thereupon said judge may proceed with the trial or hearing or other business so assigned to him in the principal court room, or in a separate room attended by the clerk or one of his deputies, and by the sheriff, or one or more of his deputies, by a stenographer, and by jurymen not engaged in the trial of other causes, if it be a cause to be tried by a jury, and each judge, while so sitting for the transaction of business, shall have all the powers of any circuit judge sitting in any circuit court in this State, and the proceedings shall be regarded as proceedings of the circuit court had in open court and at a session of the said circuit court. If a sufficient number of jurymen shall not be in attendance upon the court, and not engaged on the trial of other causes, said judge may direct talesmen to be summoned as in other cases. The said judges may make rules from time to time, in relation to the making up of the trial docket and as to the disposition of the business of the court, not inconsistent with any general laws of the State. Assignment of business.
Trial or hearing.
Powers of single judge.
Talesmen.
Rules.

SEC. 54. In case of the absence, illness or inability from other cause, of either judge to do any of the business assigned him, the same shall be done by one of the others. Absence, etc., of judge.

SEC. 55. The record of the proceedings before each of the judges shall be entered in the journal of the court in the usual manner, and said journals may for convenience, at the option of said judges, be kept in separate books, appropriately marked, and said records shall be verified by the signature Record*of proceedings.

Signature
to bill of
exceptions,
etc.

Orders and
decrees.

Stay of pro-
ceedings,
order for.

Vacation
of order.

Court room
and facilities.

of the judge before whom the business is transacted. Whenever the signature of a judge of the court shall be required to any bill of exceptions or decree or other evidence of proceeding, or for the approval or verification of any act, the signature of the judge or judges before whom the proceedings were had shall be deemed sufficient. Orders and decrees entered in the chancery record shall be verified by the signature thereto of the judge or judges making such order or decree.

SEC. 56. No stay of proceedings shall be directed or ordered by any one of the said circuit judges in any cause or proceeding excepting when the order or decree under which the proceedings are stayed shall have been made by such judge, except that where the judge making such order or decree on which the proceedings are sought to be stayed shall be absent or unable to act, then an order staying proceedings on such order or decree may be made by either of the said circuit judges, and no order or decree shall be set aside or vacated except by the judge making the same, unless such judge shall be absent or unable to act.

SEC. 57. Such additional court room and facilities shall be provided by the boards of supervisors of the respective counties, having more than one circuit judge, as shall be requisite for the prompt and decent dispatch of business.

Salaries of Judges.

Salaries.

Additional
pay.

Expenses.

How
reimbursed.

SEC. 58. Each circuit judge and each of the judges of the recorder's and of the superior court shall receive an annual salary of thirty-five hundred dollars, payable out of any moneys in the State treasury belonging to the general fund, not otherwise appropriated. The amount herein provided shall be compensation in full for all services performed by each of said judges in this State, unless the board of supervisors shall have, or at any regular session hereafter shall vote to pay the circuit judge regularly holding court in such county or unless the common council shall vote or shall have voted to pay the judges of the recorder's or superior court, an amount in addition to the salary herein designated.

SEC. 59. Every circuit judge shall be reimbursed from the State treasury, upon the warrant of the Auditor General, his actual expenses incurred by him in holding court in any county other than that in which he may reside.

SEC. 60. Each circuit judge, entitled to reimbursement under the provisions of the preceding section, shall make a certificate of the expenses incurred by him in so holding court, and the same shall be presented to the Board of State Auditors for allowance, and upon the allowance, the Auditor General shall issue his warrant on the State treasury for the amount of the same to the person entitled thereto.

Of Holding Courts by Judges of Other Circuits.

SEC. 61. Upon proper showing and request made by the presiding judge of any of the circuit courts of this State, that the business of such court has increased beyond the capacity of the judge or judges of said circuit court to properly dispose of, or in case a vacancy shall exist in the office of the circuit judge in any judicial circuit, or by reason of the inability of any circuit judge to discharge the duties of his office, it shall be the duty of the Governor to designate a judge or judges of some other circuit or circuits, whose official duties will permit for the time being, to hold the court temporarily for such time as he may deem advisable, and the judge or judges so designated shall perform the duties and hold court for such time in like manner and with like effect as they severally and respectively could have done if they had been elected to such office in the circuit where such duties as judge are performed.

When governor to designate judge to hold court in other circuit.

SEC. 62. Where a judge is delegated to assist in the work accumulated in another circuit, as provided in section sixty-one, it shall be the duty of the sheriff of the county, or of the county auditors, as the case may be, to provide a suitable place where such judge or judges so designated shall hold court, and all extra expense incurred for this purpose shall be a proper charge against the county where such court is held, and shall be audited and allowed by the board of auditors or supervisors, as the case may be, of such county.

Suitable place to be provided.

Extra expense.

SEC. 63. All the necessary expenses of said circuit judges, or either of them so designated in going from their respective places of residence for the purpose of so holding court, and in returning thereto, and all their other necessary expenses for that purpose, not exceeding the sum of ten dollars for each day that either of such judges shall so hold court, shall at the end of the time or term for which said judges respectively shall be so designated, when duly certified by them, be allowed by said circuit court, and shall thereupon be audited and allowed by the board of county auditors or the board of supervisors, as the case may be, for the county, and shall be paid out of the county treasury of the county where such court is held.

Expenses of judges, how paid.

Limit.

Of the Clerks of Circuit Courts.

SEC. 64. The county clerk of each county, where there is more than one circuit judge, shall, with the approval of the judges of said court, appoint a sufficient number of deputy clerks to attend upon the proceedings before said judges.

Deputy county clerks.

SEC. 65. The office and designation of register in chancery is hereby abolished. The county clerk of each county shall be the clerk of the circuit court for such county, both at law and in chancery, and shall attend every term thereof, and shall have the care and custody of all the records, seals, books and papers pertaining to the office of the clerk of such court.

Register in chancery abolished.

Clerk of circuit court.

Duties.

and filed or deposited therein, and shall provide such books for entering the proceedings in said court, as the judge thereof shall direct. Whenever in any statute of this State, the designation "register in chancery" occurs, it shall be deemed to apply to the clerk of the circuit court.

When to
account for
fees, etc.

SEC. 66. Within ten days after the first day of each term of court, the county clerk shall pay over and account in detail to the county treasurer for all entry fees, jury fees and stenographer's fees, and any and all other sums of money or fees belonging to the county, and received by him during the preceding term.

Deposit
of moneys.

SEC. 67. All moneys brought into the court for or by any suitor, and paid to the clerk, shall be deposited in such banks, or safely kept in such other manner as the court shall direct.

Account to be
exhibited.

SEC. 68. On the first day of the term of the court, the clerk, at the place where the same is held, shall exhibit the account kept by him of all such moneys, and also his bank account, in case such moneys shall have been deposited in a bank.

Certificate
of cashier.

SEC. 69. Every such bank account shall be accompanied by a certificate of the cashier of the bank in which the deposit is made, that the total amount stated therein to be deposited, is actually in the bank, placed to the credit of such clerk, as clerk of said court in chancery of the proper county, and not mingled with any other account.

How money
paid out.

SEC. 70. No money brought or paid into the court, and deposited in any bank to the credit of any officer of the court, shall be paid out by such bank, without the production of the order of the court, authenticated by the signature of the circuit judge.

Investment
of moneys.

SEC. 71. Each circuit judge may cause any moneys brought into court pursuant to any order made by him, to be invested or placed at interest, as he shall think proper; and the party bringing money into court pursuant to any order thereof, shall in all cases be discharged from all further liability to the extent of the money so brought into court.

Discharge
from
liability.

Stocks and
securities.

SEC. 72. All stocks and securities taken by order of the court for the benefit of suitors therein, shall, if directed to be taken in the name of any officer of the court, be taken in the name of the clerk of the court in which said suit is pending, and every such clerk shall keep just and full accounts of all moneys, stocks and securities which shall come to his hands by virtue of his office, and of all payments and investments made by him.

Accounts.

Death or
removal
of clerk.

SEC. 73. On the death, removal from office, or resignation of a clerk, all stocks, mortgages and other securities vested in him at the time of such death, removal or resignation, by virtue of any of the proceedings of the court, shall vest in his successor in office in like manner as if such clerk had been a corporation sole, with right of succession.

Moneys
in bank.

SEC. 74. All moneys deposited in any bank, to the credit of such clerk, shall, upon his death, removal from office, or resignation, be carried to the account of his successor in office;

and every such bank shall take notice thereof, and transfer such accounts accordingly.

SEC. 75. Each circuit judge may, from time to time, make such rules and regulations concerning such moneys, stocks and securities, as he shall deem just and reasonable; and all such rules and regulations shall be entered in the minutes of the court. Rules as to moneys, etc.

SEC. 76. In all such cases, when it shall seem to the circuit judge necessary, or proper to do so, said circuit judge may require said clerk to file with the county treasurer bonds, in addition to his official bond, in such amount, and within such time as he may order, conditioned that said clerk shall, in all respects comply with the requirements of law, in the handling and management of such funds, and to faithfully account for the same. Additional bonds.

Of Sheriffs as Court Officers.

SEC. 77. At any term of any court of record within this State, at which the sheriff or his deputies may by law be required to attend, such court shall have the power, and it shall be its duty, to fix, determine, and regulate from time to time, the number of such officers aforesaid as in the opinion of such court shall be necessary for the transaction of its business, and no greater number shall attend such court and be paid for such attendance, than shall from time to time be fixed and determined as aforesaid, by the court. Number of sheriffs to attend court.

SEC. 78. The sheriffs of the respective counties shall be officers of the circuit court at law and in chancery, for the purpose of executing the process of the court; and the sheriff to whom any process of said court shall be directed, shall be amenable to the court in its execution, and may be punished for his disobedience or default therein, in the manner prescribed by law. Sheriffs to be officers of court.

SEC. 79. The sheriff of the county and his deputies, in which any stated term may be held by the circuit judge, shall, upon pain of being fined in the discretion of the court, be bound to attend said court during its sitting, in such manner as the court shall direct; and such officers so attending may execute all the lawful orders and process of the court in any county of this State. Attendance. Execution of process.

SEC. 80. No sheriff, deputy sheriff or coroner shall appear in any court as attorney or counsel for, or on behalf of any party in a suit; nor shall he draw, make or fill up any writ, declaration, plea or process, for any such party; nor shall he, with intent to procure himself to be employed in the collection of any demand, or the service of any process, advise or counsel any person to commence any suit or proceeding; and either of said officers, for a violation of any provision of this section, shall forfeit the sum of fifty dollars. Sheriff not to appear as attorney, etc.

SEC. 81. Any sheriff, deputy sheriff, coroner or constable, may require suitable aid in the service of process in civil or criminal cases, in preserving the peace, or in apprehending or

Power of county. securing any person for felony or breach of the peace, when such officer may have power to perform such duty; and when any such officer shall find resistance made against the execution of any process, or shall have good reason to believe that such resistance will be made, he may take the power of the county and proceed therewith in proper person to execute the process.

Of Circuit Court Commissioners.

Election. SEC. 96. There shall be elected at the next general election to be held in this State, and every two years thereafter, one circuit court commissioner in each of the organized counties, who shall enter upon the discharge of their official duties on the first day of January succeeding their election, and shall hold their offices two years, and be vested with judicial powers not exceeding those of a judge of the circuit court at chambers: *Provided*, That in each county in this State wherein any census taken by the authority of this State, or of the United States, shall show a population of twenty thousand or more, there shall be elected at the general election next succeeding the taking of such census, and every two years thereafter, two such circuit court commissioners; except as otherwise provided by any existing local act.

Term.
Powers.
Proviso, two commissioners.
Designation of successors. SEC. 97. Whenever, in any county, two circuit court commissioners shall have been elected, it shall be the duty of the board of county canvassers to designate which of the persons so elected shall succeed to the office theretofore held by each circuit court commissioner: *Provided*, That if in any case the said board of county canvassers shall neglect or refuse to make such designation it may be made by the circuit judge of the judicial circuit of which such county constitutes the whole or a part.

Proviso, when made by judge.
Qualification. SEC. 98. No person shall be elected a circuit court commissioner unless he be at the time an attorney and counselor.
Oath of office. SEC. 99. Every circuit court commissioner, before he shall enter upon the duties of his office, shall take and subscribe the oath of office prescribed by the constitution of this State, before some judge or clerk of a court of record, and cause the same to be filed by him in the office of the county clerk of his county.

Bond. SEC. 100. Each circuit court commissioner, before entering on the performance of the duties of his office, shall execute a bond to the people of this State, with sufficient surety or sureties to be approved by the circuit judge or clerk of his county, conditioned for the faithful performance of the duties required of him by law, in the penal sum of not less than three thousand nor more than five thousand dollars, in the discretion of the circuit judge or county clerk by whom the same may be approved; said bond, when approved, shall be filed with the county clerk of the proper county. Any circuit court commissioner shall renew his bond whenever required so to do by the circuit judge of his county.

Approval.

Renewal.

SEC. 101. Circuit court commissioners, qualified according to law, shall severally be authorized and required to perform all the duties and execute every act, power and trust which a judge of the circuit court may perform and execute out of court, according to the rules and practice of such court, and pursuant to the provisions of any statute, in all civil cases, except as herein otherwise provided; but when any power is given in express terms, by any statute, to a circuit judge or to circuit judges, without naming circuit court commissioners in such statute, such commissioners shall not be authorized to exercise any such powers.

Powers.
When not authorized to act.

SEC. 102. No circuit court commissioner shall be authorized to grant any order to stay proceedings before judgment in any cause in which a verdict shall have been rendered; nor any order to stay proceedings on any *capias* respondendum.

May not stay proceedings.

SEC. 103. When the supreme court shall have made any order in reference to a matter, such order shall not be suspended, or in any manner affected, by an order granted by a circuit court commissioner.

Not to suspend supreme court orders.

SEC. 104. If an application for any order be made to any justice of the supreme court, judge of a circuit court, or circuit court commissioner, and such order be refused, in whole or in part, or granted conditionally or on terms, no subsequent application in reference to the same matter and in the same stage of the proceedings shall be made to any other circuit judge or circuit court commissioner; and if upon a subsequent application any order be made by a circuit judge or circuit court commissioner, it shall be revoked by such judge or commissioner, or by any justice of the supreme court, upon due proof of the facts.

When order refused, etc., subsequent application not to be made.

SEC. 105. Every person making such subsequent application contrary to the foregoing provisions, with knowledge of any previous application and refusal, shall be liable to be punished by fine and imprisonment by the court in which such matter may be pending.

Penalty for application.

SEC. 106. No circuit court commissioner having a law partner in whose name the business of the copartnership shall be carried on, shall be competent to perform any act authorized by law in any suit or proceeding in which such partner shall be in anywise interested.

Partner interested.

SEC. 107. The supreme court shall have power, by general rules, to prescribe any other cases in which circuit court commissioners shall not be authorized to grant any orders in relation to suits, and to prescribe the terms and conditions upon which orders may be granted in any specified class of cases; and also, by order in any particular case to forbid the interference of any such commissioner.

Supreme court to prescribe rules.

SEC. 108. The several circuit court commissioners shall, within their respective counties, be competent to discharge all such duties as have formerly been performed by masters in chancery in this State, according to the practice in chancery proceedings, and all such other powers as shall be conferred

Masters in chancery.

Proviso,
testimony
taken before
justice or
notary.

upon them by the several circuit courts according to law, and shall be amenable to the circuit courts within the jurisdiction and under the orders of which they may respectively act: *Provided, however*, That testimony to be used in any circuit court in chancery may be taken before a justice of the peace or notary public, if the parties interested, their agents or attorney, shall enter into a stipulation to that effect, in writing, and file the same with the clerk of the circuit court of the proper county.

Duties of
injunction
masters.

SEC. 109. Each circuit court commissioner shall be authorized and empowered to do and perform, within the county in which he shall reside, all the duties formerly performed by injunction masters under such restrictions and regulations as the supreme court may prescribe: *Provided*, That when any circuit court commissioner shall have granted or refused to grant any injunction, or shall have made or refused to make any order in reference to any matter or proceeding, such injunction or order shall not be affected by any order or proceeding in relation thereto, made by any other circuit court commissioner while the commissioner making or refusing such order, or granting or refusing such injunction, shall be competent to act in the premises. And any commissioner refusing to grant any order or injunction, shall indorse his refusal upon the application for the order, or bill of complaint, as the case may be.

Proviso,
subsequent
orders or in-
junctions.

Refusal to
grant in-
junction.

Records
and files.

SEC. 110. Every circuit court commissioner shall be entitled to all the records and files pertaining to the office of his predecessor, and to suits or proceedings pending and undetermined before such predecessor, and shall be authorized to hear, try, determine and dispose of any undetermined suit or proceeding, and fully to conclude the same, and to enforce his determination in the same manner and by the like process as if such suit or proceeding had been originally commenced before him; and also to issue all proper and suitable process for enforcing any judgment or determination of his predecessor or predecessors.

Determina-
tion.

Enforcement.

Commis-
sioner of
adjoining
county.

SEC. 111. In all cases where by law any duties are required to be performed by a circuit court commissioner of any county, and there shall be no such commissioner who is not legally disqualified to act by reason of interest, connection with the matter or controversy, or for any other cause, the same may be performed by any circuit court commissioner of an adjoining county not disqualified; or if the same pertain to a matter, cause or proceeding pending in any circuit court, by a commissioner specially appointed by the judge of said court for the purpose.

Special com-
missioner.

Proof to
be made.

SEC. 112. Before any circuit court commissioner of an adjoining county shall enter upon the performance of any such duties, proof shall be made and presented to him by affidavit that there is no circuit court commissioner of the proper county competent and qualified to discharge such duties, and stating the ground of disqualification; and such proof shall

in all cases accompany the acts and form part of the proceedings of the commissioner discharging such duties.

SEC. 113. Whenever any process shall have been issued by or any matter shall have been referred to any circuit court commissioner, and on any day set for the return or hearing thereof, such commissioner shall be absent or otherwise disqualified from acting therein, it shall be lawful for any other circuit court commissioner or other officer having authority to perform the like duty in the same county, to assume jurisdiction thereof and to proceed therein, and to hear, try and determine the same, and to make all orders, certificates, reports and returns, and to take and approve all bonds and recognizances, and to make and issue all further papers or process therein with like effect in all respects as if the original process had been issued by, or the matter had originally been referred to him; or he may in his discretion adjourn the same from time to time, and on the adjourned day proceed therein, or on said adjourned day the circuit court commissioner who issued said process, or to whom said matter was referred, if not then disqualified, may assume jurisdiction of the said matter or proceeding, and proceed in all respects therein as if the said adjournment or adjournments had been made by himself.

Absence, etc.,
of com-
missioner.

SEC. 114. Whenever any such commissioner shall have advertised property for sale in pursuance of a decree of a court, and on the day when the sale is so advertised to take place, or on any day to which the same may be adjourned, the said commissioner shall be absent or otherwise disqualified from acting in the premises, the other circuit court commissioner of the county, if there be one who is not disqualified from acting, and if not, then a circuit court commissioner of an adjoining county may proceed and make the sale, and thereafter make and execute the deed or deeds for the property sold, and make his report of the same to the proper court, and may proceed in all respects as if he had originally advertised the said property for sale; or he may in his discretion adjourn the sale from time to time and publish notices of adjournment in his own name, and make the sale on the adjourned day, unless the commissioner who advertised the same shall then be present and competent to proceed therewith, in which case he shall be entitled at his election to do so.

Absence, etc.,
at date of sale.

SEC. 115. In all cases where any circuit court commissioner shall have advertised real estate for sale under and by virtue of any decree or order of any court of this State, and his term of office shall expire before the sale shall be consummated, it shall be competent and lawful for him to proceed to complete the sale and report thereof, and do all things necessary to perfect the same, as if his term of office had not expired; and for such purpose his power and authority shall continue until all such business is fully closed.

Expiration
of term.

SEC. 116. Any circuit court commissioner may be suspended by the circuit judge of his county, from the exercise of the

Suspension by
circuit judge.

Removal.
Vacancy,
how filled.

powers and duties of his office, in cases of misconduct therein, after due notice and a full opportunity of making his defense shall have been given him; and the circuit judge of the county shall immediately report such suspension, with the reasons therefor, to the Governor, who may remove him from office.

SEC. 117. Whenever a vacancy shall occur, for any cause, in the office of circuit court commissioner of any county, the Governor may fill such vacancy by the appointment of a person eligible to such office, who shall, upon taking the official oath and executing and filing the bond, as provided in section one hundred of this chapter, be authorized and required to discharge all the duties of circuit court commissioner, and shall be liable to all the provisions of law touching said office, and shall hold the same until his successor shall be duly elected and qualified.

Continuance
of present
incumbents.

SEC. 118. Circuit court commissioners heretofore elected or appointed, and now in office, shall continue to perform the duties of their respective offices, as provided by law, during the remainder of the term for which they were elected or appointed.

Proceedings
in case of
infants, etc.

SEC. 119. In all cases or proceedings before a circuit court commissioner, where either party thereto is an infant, or is mentally incompetent, the same proceedings shall be had as near as may be, as are provided in like cases in chapter twelve of this act.

The Return and Summoning of Jurors.

Making
of lists.

SEC. 120. The supervisor and township clerk of each township, and the supervisor or assessor, as the case may be, and alderman of each ward or assessment district in any city, shall, at the time appointed by law for the review of the assessment roll for each year, make a list of persons to serve as petit jurors, and a list of persons to serve as grand jurors for the ensuing year; but in no case shall one of their own number be put upon such list.

How lists
made.

SEC. 121. The said officers shall proceed to select from the persons assessed on the assessment roll of the township or ward for the same year, suitable persons, being citizens, having the qualifications of electors, to serve as jurors; and in making such selection, they shall take the names of such only as are not exempt from serving on juries, who are in possession of their natural faculties, and not infirm or decrepit, of good character, of approved integrity, of sound judgment, and well informed and conversant with the English language, and free from all legal exceptions, and who have not made, and in whose behalf there has not been made, to the officers mentioned in the preceding section, any application to be selected and returned as jurors.

How many
to contain.

SEC. 122. Such lists shall contain not less than one for every one hundred inhabitants of such township or ward, computing according to the last preceding census, and having regard to the population of the county, so that the whole

number of jurors selected in the county shall amount at least to one hundred, and not exceeding four hundred, one-half of whom shall be designated as petit jurors, and one-half as grand jurors.

Petit and grand jurors.

SEC. 123. In making such selection, the said officers shall avoid, as far as practicable, selecting any of the same persons who are actually drawn, and who served as jurors, during the preceding year.

Whom to avoid.

SEC. 124. Duplicate lists of the persons so selected, shall be made out and signed by the officers making such selection, or the major part of them, and within ten days thereafter one of each of said lists shall be transmitted to the county clerk, and the other shall be filed with the clerk of the township or assessor of the ward, as the case may be.

Duplicate lists.

SEC. 125. In cities where the commission form of government has been or may hereafter be adopted and the city is made to consist of one ward, the list of jurors from such city shall consist of four names from each voting precinct containing four hundred inhabitants or less according to the last preceding census, and six names from each voting precinct containing more than four hundred inhabitants according to said census. One-half of such names shall be designated as grand jurors and one-half as petit jurors. Such lists when so selected shall be added to the list of jurors selected from other portions of the county, and such aggregate lists when so prepared shall be used in selecting grand and petit jurors of the circuit court for the county in which said city is located until a new list shall be chosen in accordance with law, and in the selection of the jurors for the regular panel, each voting precinct shall be entitled to the same number of jurors as the township or ward of a city had the commission form of government not been adopted.

Lists in cities under commission form.

Grand and petit jurors.

Lists used in selection of jurors.

SEC. 126. The manner of selection and designation of said jurors shall in all other respects conform to the provisions of law then existing.

Conformity to law.

SEC. 127. On receiving such lists, the county clerk shall file the same in his office, and shall write down the names contained therein on separate pieces of paper of the same size and appearance as nearly as may be; and shall fold up each of such pieces of paper so as to conceal the names thereon, and he shall make two separate packages for each township or supervisor district or voting precinct in cities having a commission form of government in his county, one package for the names of the grand and one for the names of the petit jurors, upon each of which packages he shall indorse the name of the township or supervisor district, or voting precincts in cities having a commission form of government, in which the persons whose names are contained in such package reside, and also on the package containing the names of persons returned as grand jurors, the words "grand jurors"; and on the package containing the names of the persons returned as petit jurors, the words "petit jurors"; and he shall place in the

County clerk to file lists.

Arrangement of names.

package marked "grand jurors" all the names appearing upon the lists returned as grand jurors; and in the package marked "petit jurors" all the names appearing upon the list returned as petit jurors from the township or supervisor district, or voting precinct represented by the name indorsed upon such package, and he shall number said packages in numerical order, commencing with number one.

Service of
one year.

SEC. 128. The persons whose names shall be so returned shall serve as jurors for one year, and until other lists from the respective townships or wards shall be returned and filed.

Old names
destroyed
upon receipt
of new.

SEC. 129. Upon receiving such new lists, the county clerk shall destroy the names placed in said packages for the preceding year and replace the same by the names contained in such new lists in the same manner as above required.

When petit
and grand
jurors drawn.

SEC. 130. At least fourteen days before the holding of any circuit court at which such juries shall be required by law, the clerk of the county where such court is to be held shall draw from the petit jurors the names of twenty-four persons, and any additional number that may have been ordered by the court, to serve as petit jurors; and also from the grand jurors the names of twenty-three persons to serve as grand jurors, if a grand jury shall have been ordered by the court.

Notice of
drawing.

SEC. 131. At least three days before the drawing of such jurors, the clerk shall give notice to the sheriff and two justices of the peace of said county, of the day and hour when such drawing will take place.

Witnesses.

SEC. 132. At the time so appointed, it shall be the duty of the sheriff of the county in person, or by his under sheriff, and the justices aforesaid, to attend at the clerk's office of the county, to witness such drawing; and if any two of said officers shall attend at the time and place appointed, the clerk shall proceed in their presence to draw the jurors.

Clerk to
draw jurors.

Adjournment.

SEC. 133. If two of the officers so notified do not appear, the clerk shall adjourn the drawing of such jurors until the next day, and shall, by written notice, require any justice of the peace of the county, to attend such drawing on the adjourned day.

To notify
justice.

When clerk
to proceed.

SEC. 134. If at the adjourned day, any two of the officers notified to attend the drawing of such jurors shall appear, but not otherwise, the clerk shall proceed, in the presence of the officers so appearing, to draw the jurors.

Drawing, how
conducted.

SEC. 135. The clerk shall conduct such drawing as follows:

1. He shall place in a box prepared for that purpose, first only the names contained in one of said packages, and he shall then shake the box so as to mix the slips of paper upon which such names were written as much as possible;

2. He shall publicly draw out of said box one slip of paper, and hand the same to the officer in attendance whose duty it is to keep a minute of the names drawn; when such officer shall have made a minute of the name so drawn, said clerk shall withdraw from said box all the remaining names and return them to the package from which they were taken;

and thereupon he shall place in said box only the names contained in the package represented by the number next in numerical order to the one from which the last name was drawn, and shall proceed to draw therefrom one name, hand the same to the attending officer, and return the balance thereof to the package from which they were taken in the same manner as hereinbefore provided for drawing the first name, and the said clerk shall continue drawing one name from each package in their numerical order in the manner hereinbefore provided until the number of jurors required shall have been drawn, and the said county clerk shall keep a record of the number of the package from which the last name was drawn at each drawing, and shall at the next succeeding drawing of jurors commence to draw from the package next in numerical order to the one from which the last name was drawn at the last preceding drawing;

3. A minute of the drawing shall be kept by one of the attending officers, in which shall be entered the name contained on every slip of paper so drawn, before any other such slip shall be drawn;

4. If, after drawing the whole number required for grand or petit jurors, the name of any person shall appear to have been drawn who is dead, or insane, or who has permanently removed from the county, to the knowledge of the clerk or any other attending officer, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing such name shall be destroyed;

5. Another name shall then be drawn in the place of that contained on the slip so destroyed, which shall in like manner be entered in the minutes of the drawing;

6. The same proceedings shall be had as often as may be necessary, until the whole number of jurors required shall have been drawn;

7. The minute of the drawing shall then be signed by the clerk and the attending officers, and filed in the clerk's office;

8. Separate lists of the names of the persons so drawn for petit jurors, and of those drawn for grand jurors, with their places of residence, and specifying for what term of court they were drawn, shall be made and certified by the clerk and the attending officers, and shall be delivered to the sheriff of the county.

SEC. 136. The sheriff of every county in this State shall serve a personal notice upon each of the persons summoned to serve as petit jurors at any term of the circuit court of said county, by making out a written notice to each person summoned and enclosing the same in a sealed envelope addressed to the person so summoned to serve as such petit juror, at his last known place of residence, which written notice enclosed in said envelope and addressed to the person summoned shall be sent to his last known place of residence by registered mail, at least ten days before the first day of the next term of the court, with a demand in writing

Notice to
persons
drawn.

Return. on said envelope for the return registry receipt. The sheriff shall make a proper return to the said circuit court at the opening of the term for which said petit jurors have been summoned specifying who have been summoned as such petit jurors for said term of the court and the manner in which such service was made, attaching to his said return the returned registry receipts demanded and received from the persons so summoned.

Copy of lists. SEC. 137. It shall be the duty of the county clerk to furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the lists of jurors drawn to attend any court.

Exemption from service. SEC. 138. The following persons shall be exempt from service as jurors, to-wit: All officers and employes of the United States; all officers and employes of the State of Michigan; all county officers and their deputies; all judges of courts of record; all attorneys and counselors; all officers and teachers of colleges and incorporated academies; all settled ministers of the gospel; all superintendents, engineers and conductors of any railroad; all constant ferrymen; all members of any legally organized fire department; all members of the Michigan national guard; all registered pharmacists; all practicing physicians, surgeons and dentists; and all persons more than sixty-five years of age.

Excuse from service. SEC. 139. The court to which any person shall be returned as a juror, shall excuse such juror from serving at such court, whenever it shall appear:

1. That he is exempt from serving on juries by the provisions of the preceding section; or

2. That he is a justice of the peace, or executes any other civil office, the duties of which are, at the time, inconsistent with his attendance as a juror; or

3. That he is a teacher of any school, actually employed and serving as such; or

4. When for any other reason, the interests of the public, or of the individual juror, will be materially injured by such attendance, or his own health, or that of any member of his family requires his absence from such court.

Destruction of ballot. SEC. 140. When any person shall be so excused from serving, on the ground that he is exempt by law from serving on juries, the clerk shall destroy the ballot containing the name of such person; and when any person shall be excused from serving for any other cause, the ballot containing his name shall be returned to the box from which it was drawn.

Return of ballot.

Disposition of ballots.

SEC. 141. After the adjournment of any court at which any jurors shall have been returned, as herein provided, the clerk shall enclose the ballots containing the names of those who attended and served as jurors, in an envelope under seal, or deposit the same in a separate box; and the ballots containing names of those who did not appear and serve as jurors, which shall not have been destroyed, shall be returned to the box from which they were taken.

SEC. 142. If at the time of drawing any jury by the clerk, as herein provided, there shall not be a sufficient number of ballots remaining in the boxes in which they were originally deposited, after drawing all that may be therein, the clerk shall return to such boxes the ballots containing the names of those who have previously attended and served as jurors during the same year, and shall then draw from such boxes the number of jurors required, in the same manner and with the like effect, as if jurors had not been previously drawn.

When ballots
insufficient.

SEC. 143. Whenever in the opinion of the judge of any circuit court, more than twenty-four petit jurors shall be necessary to attend any such circuit court, he may, by an order under his hand, direct such additional number of jurors as he shall deem necessary to be drawn.

Additional
jurors.

SEC. 144. Such order shall be served on, and filed with the clerk of the county in which such court is to be held, at least twenty days previous to the day appointed for the commencement thereof; and the said clerk shall thereupon draw the number specified in such order, in addition to the number otherwise required by law, and shall proceed therein in all respects in the same manner herein prescribed.

Order for.

How drawn.

SEC. 145. In case the officers whose duty it is under this chapter to make and return lists of petit jurors, fail to meet, make or return said lists at the time and in the manner prescribed by this chapter; or in case said lists shall become exhausted; or in case said lists shall for any reason be declared illegal before the year for which they were made shall have expired, it shall be lawful for the circuit judge of any circuit court in this State to direct said officers to forthwith meet, make and return to the county clerk new lists of jurors for the remainder of the year, from which lists so made and returned jurors shall be drawn for the balance of the year. And whenever, for any cause, grand or petit jurors shall not have been drawn and summoned to attend any circuit court, or a sufficient number of qualified jurors shall fail to appear, or if at any time an insufficient number shall be in attendance to meet the needs of the court, such court may, in its discretion, order a sufficient number of grand or petit jurors, or both, to be forthwith drawn and summoned, in such manner as the court shall direct, to attend said court: *Provided*, That in drawing jurors under this section the court may, for the purpose of obtaining a jury or talesmen near the county seat, direct from which township or supervisor districts or voting precinct such jurors shall be drawn.

New lists
of jurors.

Failure
of jurors.

Provido,
court may
direct whence
drawn.

SEC. 146. Every person summoned pursuant to the provisions of the last preceding section shall attend forthwith, and serve as a juror, unless excused by the court; and for every neglect or refusal so to attend, shall be subject to the same penalty as jurors regularly drawn and summoned.

Attendance
of juror
forthwith.

SEC. 147. Each grand and petit juror and each talesman shall be entitled to receive three dollars for each day's attendance, and one dollar and fifty cents for each half day,

Per diem and
mileage
of jurors.

upon any term of the circuit court, or before any court of record, and ten cents for each mile traveled in going and returning by the nearest traveled route, to be paid out of the county treasury of the county, on the certificate or order of the clerk or judge of such court.

Drawing
jurors in
certain
counties.

SEC. 148. The county clerk, in counties having a population of two hundred thousand or more, shall, under the direction of the circuit judge of any of the circuit courts of said counties, in the manner authorized by law, once in each calendar month, draw a fresh panel of citizens qualified for jury duty, to sit and act as jurors in said court, whose respective terms of jury duty, except to finish partly tried cases, shall not exceed sixty days each, except that during the months of July and August the clerk of any of said courts by direction of the judges may omit the calling of any jurors, and any person who shall serve as a juror in a court of record in such county shall be disqualified for further jury duty for the term of one year, in courts of record in the same county.

Provisions
not to apply.

SEC. 149. The provisions of this chapter, relative to the manner of selecting and returning to the county clerk a list of persons to serve as grand and petit jurors, shall not apply to counties having a board of jury commissioners, nor in counties where such list is selected and returned by officers or persons other than provided in this chapter.

Jury Commissioners.

Appointment.

SEC. 150. In each county of this State, the Governor shall, upon recommendation of the judge, or judges of the circuit in which such county is situated, appoint a board of jury commissioners consisting of three persons, no more than two

Qualifications.

of whom shall be members of the same political party, and each of whom shall be a resident elector and freeholder in said county, whose term of office shall be for six years; in

Term.

the first instance, one of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and every two years thereafter one member of said board shall be appointed for a

Vacancies.

Ineligibility.

term of six years; and the Governor shall, on like recommendation, fill all vacancies occurring on said board from any cause. No person holding an office, or employment of profit, in or under any city government, county government, the State of Michigan, or the United States, except that of notary public, shall be eligible to appointment as such commissioner.

Terms begin.

The official terms of said commissioners shall begin on the first day of February after their appointment.

Oath.

Said commissioners shall, before entering upon their duties, take the constitutional oath of office, and file the same with

Compensation.

the county clerk. Said commissioners shall receive as compensation for their services the sum of three dollars for each day actually engaged in the performance of duty, and such actual expenses as shall be incurred in traveling to ascertain the qualifications of jurors, and in attendance upon meet-

ings of the board, to be audited and approved by the circuit judge of the circuit in which such county may be located, and be paid by the county treasurer on the certificate of the county clerk.

SEC. 151. Said board shall meet annually on the second Monday of April in each year, at the hour of ten o'clock in the forenoon, or as soon thereafter as shall be found practicable, at the office of the clerk of said county, and shall then and there select from the tax rolls of the cities, wards and townships of the said county for the preceding year, a list of names of persons to serve as petit jurors in the circuit court of the said county for the succeeding year. The county clerk shall be the clerk of the said board, and shall keep a record of their doings in a book to be provided for that purpose, which record shall, at the close of each meeting of the board, be signed by the members thereof, and attested by the said clerk, and shall then be evidence in all courts and places of the doings of the said board.

Meeting.

Selection
of lists.

Clerk.

Record.

SEC. 152. No names shall be placed upon said lists, except those of persons being citizens and having the qualifications of electors, and such only as are not exempt from serving on juries, who are in possession of their natural faculties, and are not infirm or decrepit, of good character, of approved integrity and sound judgment, and well informed and conversant with the English language, free from all legal exceptions, and who have not made, and in whose behalf there has not been made to said commissioners, or either of them, any application to be selected and returned as jurors.

Names
on lists.

SEC. 153. Said lists shall consist of four names from each township and ward in such county having four hundred population, or less, according to the last federal census, and of one name additional for each additional one hundred population, and in the case of cities not divided into wards there shall be one name for each one hundred population in said city. In case there is not sufficient population in any county so that at least one hundred names shall be returned, then it shall be the duty of said commission to add to such list of names, a sufficient number from each city, ward and township, in accordance with the population thereof, to make a list of one hundred names.

Number
of names.

SEC. 154. Said commissioners shall also make a list of names of persons of like qualifications to serve as grand jurors, consisting of two names from each township and ward in the county. Such list shall not contain any name already on the list of petit jurors. In the case of cities not divided into wards, they shall place upon said list one name for each five hundred population, according to the last census. In any case, where according to the foregoing provisions, there shall not be at least fifty names on said list, then it shall be the duty of said commissioners to add to such list of names, a sufficient number from each city, ward and township, in accordance with the population thereof, to make a list of fifty names.

Lists for
grand jurors.

Subsequent
proceedings.

SEC. 155. After the completion of said lists of petit and grand jurors, the subsequent proceedings shall be the same in all respects as is or may be provided by law, for the drawing and impaneling of juries.

Referendum.

SEC. 156. The provisions of the six last preceding sections shall not be in force or take effect in any county, until a majority of the voters voting thereon at an election as hereinafter provided, shall have voted in favor of the same. The

Submission.

question of the adoption of the provisions of such sections may be submitted to the voters of each county at any general election, after the passage of this act, by resolution of the board of supervisors, and like notice of the submission of the same shall be given as is required by law in the case of elections to elect county officers, and shall be submitted in substantially the following form:

Ballot.

Shall the provisions of sections one hundred fifty, one hundred fifty-one, one hundred fifty-two, one hundred fifty-three, one hundred fifty-four and one hundred fifty-five of chapter two of act number (here insert number of this act) of the Public Acts of nineteen hundred fifteen, providing for a board of jury commissioners, be adopted by this county?

Yes [].

No [].

Adoption of
provisions.

SEC. 157. If a majority of the electors voting on such proposition in any county, as determined by the canvass of votes cast, shall vote in favor thereof, from and after such determination, the provisions of said sections one hundred fifty, one hundred fifty-one, one hundred fifty-two, one hundred fifty-three, one hundred fifty-four and one hundred fifty-five shall be in force, and all other provisions of law relating to the making up of lists of jurors shall be superseded and repealed in such county: *Provided, however,* That the jury lists then on file and in use in such county, shall continue to be valid and to be used until such time as the board of jury commissioners herein provided for shall have been appointed, and shall have completed and filed the lists herein required to be made by them.

Proviso,
present
lists valid.

Submission of
proposition.

SEC. 158. The board of supervisors shall submit such proposition to the electors at the next general election whenever petitions for such submission, signed by ten per cent of the qualified electors of said county as shown by the last preceding general election, shall be filed with the county clerk of said county.

Present
provisions
continued.

SEC. 159. In all counties of this State now having a board of jury commissioners, or in which jury lists are returned in any manner other than that provided by the general law of the State, the laws providing for such boards of jury commissioners, or such special manner of making said lists, shall continue to be in force until superseded by the adoption of the provisions of section one hundred fifty, one hundred fifty-one, one hundred fifty-two, one hundred fifty-three, one hundred fifty-four and one hundred fifty-five, as herein provided for, or until otherwise repealed.

CHAPTER III.

Of the Probate Courts.

SECTION 1. Judges of probate shall be elected in the counties in which they reside and shall hold office for four years and until their successors are elected and qualified. They shall be elected on the Tuesday succeeding the first Monday of November, nineteen hundred sixteen, and every four years thereafter.

Election and term.

SEC. 2. In counties having two hundred fifty thousand inhabitants there shall be two judges of probate and in counties having five hundred thousand inhabitants there shall be three judges of probate who shall be elected as hereinafter provided. They shall have equal powers, duties and compensation, except that the power of appointment, nomination and removal of the several employees provided by law for such court and the offices connected therewith, and the general direction and control of the business of such court, including the division of the work between the judges, shall be vested in the judge having served for the longest period continuously. Whenever the United States census shall show that any county has two hundred fifty thousand inhabitants and it has but one judge of probate, the additional office first herein provided for shall be deemed to be created and vacant, and whenever the United States census shall show that any county has five hundred thousand inhabitants the additional office next herein provided for shall be deemed to be created and vacant, which vacancy or vacancies shall be filled by appointment of the Governor and the person so appointed shall hold office until his successor is elected and qualified. At the next general election a successor to such officer shall be elected who shall hold office until his successor shall be elected at the next alternate biennial election provided for in section fourteen of article seven of the constitution, and shall have qualified.

Two and three judges.

Powers, duties, etc.

Appointment of employees and direction of business.

Additional judges.

Salaries of Probate Judges.

SEC. 3. The judges now elected, or to be hereafter elected, shall each receive an annual salary, to be paid monthly out of any money in the county treasury of their respective counties, which shall neither be increased nor diminished during the term for which they shall have been elected, except as changed by the increase or diminution of population of their respective counties. The amount of such salary to be paid to the judge of probate of the several counties shall be based upon and determined by the population of their respective counties as shown by the last preceding federal census, and such salary shall be in full compensation for all services performed by them as such judges, except as is or may otherwise be provided by law.

Salaries.

How based.

Scale of
salaries.

SEC. 4. Said salary shall be, for counties having a population of two hundred fifty thousand and upwards, six thousand dollars; for counties having a population of one hundred fifty thousand and less than two hundred fifty thousand, three thousand dollars; for counties having a population of one hundred thousand and less than one hundred fifty thousand, two thousand nine hundred dollars; for counties having a population of seventy thousand and less than one hundred thousand, twenty-eight hundred dollars; for counties having a population of less than seventy thousand and not less than sixty thousand, twenty-six hundred dollars; for counties having less than sixty thousand and not less than fifty-five thousand, twenty-five hundred dollars; for counties having less than fifty-five thousand and not less than fifty thousand, twenty-two hundred dollars; for counties having less than fifty thousand and not less than forty-five thousand, twenty-one hundred dollars; for counties having less than forty-five thousand and not less than forty thousand, two thousand dollars; for counties having less than forty thousand and not less than thirty-five thousand, seventeen hundred fifty dollars; for counties having less than thirty-five thousand and not less than thirty thousand, fifteen hundred dollars; for counties having less than thirty thousand and not less than twenty-five thousand, fourteen hundred dollars; for counties having less than twenty-five thousand and not less than twenty thousand, thirteen hundred dollars; for counties having less than twenty thousand and not less than fifteen thousand, twelve hundred dollars; for counties having less than fifteen thousand and not less than ten thousand, nine hundred dollars; for counties having less than ten thousand and not less than seven thousand five hundred, seven hundred fifty dollars; for counties having less than seven thousand five hundred and not less than five thousand, six hundred dollars; for counties having less than five thousand, ten cents for each inhabitant of such county: *Provided*, That such salary in any county of the class last mentioned shall not be less than three hundred dollars: *Provided, however*, That the board of supervisors of the several counties of this State may, by a majority vote of all the members elect, give such additional salary to the judge of probate of their respective counties as they deem just: And *Provided further*, That the board of supervisors of each county may, in their discretion, allow a sufficient amount to pay clerk hire, when such clerk is actually necessary and employed. All local and special acts and provisions relating to the salary and compensation of probate judges are hereby repealed.

Proviso,
minimum
salary.
Proviso,
additional
salary.

Further
proviso,
clerk hire.

Report
of salary to
treasurer.

SEC. 5. The county clerk of each county shall report the amount of the salary allowed the judge of probate of his county, in pursuance of the preceding section, to the county treasurer, who shall pay the same to said judge as hereinbefore provided.

SEC. 6. Each county shall provide all books, printed blanks and other stationery necessary for keeping the records in the office of the judge of probate, and all furniture, equipment and supplies necessary for equipping and maintaining said office.

Books,
blanks,
stationery,
etc.

SEC. 7. Every probate court shall be a court of record and have a seal. The seals of the several probate courts now used by them respectively, shall continue to be the seals of such courts until others shall be provided according to law.

Court
of record.
Seals.

SEC. 8. In case the probate court of any county shall have no proper seal, the judge shall, at the expense of his county, cause a seal to be made for his office, with such device as he shall think proper, and with the words "probate seal," and the name of the county inscribed thereon, and shall deliver a description thereof to the Secretary of State, to be deposited and recorded in his office.

Procurement
of seal.

SEC. 9. There shall be a probate court held in each county at the seat of justice, on the first Monday of each month, and on such other days as the judge of probate shall appoint, and in case any matter shall not be heard at the time appointed for hearing same, said matter shall stand continued until the next stated term of said court, unless the court shall otherwise order; and the court may adjourn such hearing in absence of the petitioner, or otherwise, in his discretion: *Provided, however*, Said court shall be deemed open at all times for the transaction of any ordinary business which may be necessary therein, when previous notice is not required to be given to the person interested: *Provided further*, In case an executor, administrator, guardian or trustee shall be appointed at any such hearing, such appointee shall have twenty days thereafter, or such other and further time as the court may order, in which to qualify; and unless otherwise ordered, said matter shall stand continued until the next stated term of said court, after the lapse of such period, and in case of failure to qualify, such other appointment shall thereupon be made as the court may order.

Terms
of court.

Continuance.

Proviso, open
at all times.

Further
proviso,
case of
executor, etc.

SEC. 10. The judge of probate shall have possession of the seal, records, books, files and papers belonging to said court, and shall keep a true and correct record of each order, sentence and decree of the court, and of all other official acts made or done by him, and of all wills proved therein with the probate thereof, of all letters testamentary, and of administration, and of all other things proper to be recorded in said court. Such records may be inspected without charge by all persons interested.

Possession
of seal,
records, etc.

Holding Court by Other Judges.

SEC. 11. If a judge of probate shall remove out of his county, or shall be temporarily absent therefrom, or shall die, resign, or shall be necessarily occupied in the performance of other duties required of him by law, or otherwise become incapacitated for executing the duties of his office, the judge

Absence, etc.,
of probate
judge.

Who to
hold court.

of the circuit court for such county shall hold the probate court unless he also be incapacitated for executing such duties, or the judge of any circuit court or the probate judge of any county of this State, who is not legally incapacitated for so executing the duties of such probate judge, may upon the written request of such probate judge or in case of his absence or legal disability to make such request, then upon the request of the circuit judge of such county, hold the probate court, and the judge so acting shall have all the powers and perform all the duties of the judge of probate therein, until the return of the judge of probate so temporarily absent or such incapacity is removed, or until another judge of probate shall be elected or appointed and qualified, and if any such judge so acting as judge of probate shall have begun any hearing which is not concluded at that time he shall have authority to hear such matter to its conclusion and give judgment thereon. In all cases where a circuit judge or a probate judge of any other county shall perform the duties of the judge of probate, an entry of the reason for such circuit judge or probate judge so performing such duties shall be made in the records of such probate court.

Entry of
reason.

Disqualification of Judges.

Disqualifica-
tion of judge.

SEC. 12. Whenever a judge of probate is disqualified within the meaning of section seven of chapter four of this act, or when such judge shall be an executor or administrator of a deceased person, or a creditor, or otherwise interested in any question to be decided by the court, or when he or his law partner, or any employe or assistant in his office, shall have been attorney or counsel for any party interested therein in relation thereto, such judge of probate shall be deemed incapacitated for acting in the decision of that question, and another probate judge or a circuit judge shall hold the court in his place as provided in the preceding section.

Of Probate Registers.

Appointment.

SEC. 13. In every county in this State the judge of probate may appoint a probate register, who shall hold such office during the term for which the judge of probate making the appointment shall have been elected, unless sooner removed by the judge of probate; such register so appointed shall take and subscribe the oath of office prescribed by the constitution, and give a bond in the penal sum of one thousand dollars to be approved by the probate judge, and shall exercise the power of, and be competent to do all acts required of the judge of probate except judicial acts; such register so appointed and qualifying shall receive in compensation for his or her services an annual salary to be paid monthly out of the county treasury of his county, as follows: In counties of twenty thousand and not exceeding thirty thousand, five hundred dollars, in counties of thirty thousand

Oath and
bond.

Powers.

Compensation.

and not exceeding fifty thousand, seven hundred dollars; in counties of fifty thousand and not exceeding one hundred thousand, one thousand dollars; in counties of one hundred thousand and not exceeding two hundred thousand, two thousand dollars and in counties of two hundred thousand and upwards, three thousand dollars; in counties having less than twenty thousand population, a probate register may be appointed by the probate judge, if authorized by a majority vote of the board of supervisors, the compensation of such probate register to be fixed by the board of supervisors. The board of supervisors of the several counties of this State, may by a majority vote of all the members elect, give such additional salary to the probate register of their respective counties as they may deem just. All local and special acts relating to the appointment of probate registers, or probate clerks, and their salaries and compensation are hereby repealed.

Additional salary.

SEC. 14. The probate judge or judges of any county having a probate register may appoint one or more deputy probate registers, when authorized by the board of supervisors who shall fix the salary of such deputies, and in counties having more than one hundred and fifty thousand population may appoint such probate clerks as may be necessary, when authorized by the board of supervisors, who shall also fix the salaries of such clerks. The duties of such probate clerks shall be such as may be prescribed by the judge or judges of the county in which such clerks are appointed.

Deputy registers; salaries and duties.

SEC. 15. The board of supervisors of any county may authorize the appointment by the probate judge, of one or more official stenographers of said probate court; such stenographers shall receive such salary as shall be fixed by the board of supervisors.

Stenographers. Salary.

General Provisions.

SEC. 16. No judge of probate, probate register or employee in his office shall be retained or employed as attorney or counsel, in any suit or matter which may depend on, or in any way relate to, any sentence or decree made or passed by him; nor shall he, or the probate register, or any employee in his office, be attorney or counsel for or against any executor, administrator or guardian appointed within his jurisdiction, in any suit brought by or against the executor, administrator or guardian, as such, nor in any suit relating to the official conduct of such party. Nor shall any clerk or other person employed in the office of any probate court, be commissioner, appraiser, or divider of any estate, in any case that is within the jurisdiction of such court.

Disqualification from certain employment, etc.

SEC. 17. No probate judge, probate register, probate clerk, or official stenographer, shall receive any fees or compensation for drawing any petition, application, or other paper whatever, or for any service performed by him in any matter or proceeding in said probate court, except the probate judge

Certain compensation forbidden.

Exemplifications, etc.	or the probate register shall make attested copies and exemplifications of any record, paper or proceeding in such probate court, furnish the same on request to any person, and may collect therefor the sum of twenty-five cents for certified copies of orders for publication; for certified copies of all other probate orders, seventy-five cents; for certified copies of letters of authority, one dollar; for all certifications issued under the seal of the probate court, fifty cents, and at the rate of eight cents per folio for all such copies or exemplifications and twenty-five cents additional for the certification of the same: <i>Provided</i> , That such fees shall be paid over to the county treasurer in all counties having existing local acts requiring the same.
Fees.	
Proviso, disposition of fees.	
Receipt of certain compensation cause for removal.	SEC. 18. No judge of probate, probate register, clerk, or employe of the probate office, shall receive or accept any compensation whatever for collecting from any executor, administrator or estate, any fees for the publishing of any notice or matter required in any proceeding in said court, and the receiving of such compensation therefor from any person, corporation, partnership or association, owning or controlling a newspaper publication, shall be a sufficient cause for removal from office of such judge of probate, probate register, clerk or employe.
Index.	SEC. 19. Each judge of probate shall make an alphabetical index to the records of proceedings in the probate court, and keep the same in his office.

CHAPTER IV.

General Provisions Concerning Courts of Record.

Courts of record.	SECTION 1. The several courts of this State having a seal, are courts of record, and they shall respectively have power:
Powers.	1. To issue process of subpoena, requiring the attendance of any witness residing or being in any part of this State, to testify in any matter or cause pending or triable in such courts;
	2. To administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of such courts;
	3. To devise and make such new writs and forms of proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.
Vacancy not to discontinue suit, etc.	SEC. 2. No process, proceeding or suit, civil or criminal, before any of the said courts, shall be discontinued by the occurrence of any vacancy in the office of any judge, or of all the judges of such court, nor by the issuing of any new commission to any judge or judges of any such court, but the persons appointed in any such new commission shall have power to continue, hear and determine such process, proceeding or suit, as their predecessors might have done if no new commission had been issued.

SEC. 3. Whenever the seal of any court shall be so injured that it cannot conveniently be used, the courts shall cause the same to be destroyed; and whenever the seal of any court shall be lost or destroyed, such court shall cause a new seal to be made, similar in all respects to the former seal, which shall become the seal of the court. New seal.

SEC. 4. The expense of a new seal for any circuit court, or court of probate, shall be paid by the county in which such courts are held; and the expense of new seals for other courts shall be paid from the State treasury. Expense of new seal.

SEC. 5. The sittings of every court within this State shall be public, and every citizen may freely attend the same. Sittings public.

SEC. 6. Every court shall have the right whenever any trial is being had in such court, which involves scandal or immorality, to exclude from the court room all minors, as a matter of public policy, unless such minor or minors are parties or witnesses in said cause: *Provided*, That the court shall also have the power to exclude from within the bar of the court, all persons except officers of the court, parties and witnesses in said cause. Exclusion of minors.

Proviso, exclusion from bar.

SEC. 7. No judge of any court shall sit as such in any cause or proceeding in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; nor shall any judge decide, or take part in the decision of any question which shall have been argued in the court, when he was not present and sitting therein as a judge. Nor shall any judge sit as a court in any cause in which he is related within the third degree of consanguinity to either of the attorneys or counselors of either party to said cause: *Provided*, That such last mentioned disqualification be made to appear and that it may be waived by stipulation filed in the cause; and it shall be deemed to have been waived unless the objection on account of such qualification [disqualification] shall have been filed in writing at or before the commencement of the trial or hearing. Interest of judge in case.

When not to decide, etc.
Relationship.

Proviso, waiver.

SEC. 8. No judge of an appellate court, or of any court to which a writ of certiorari or of error shall be returnable, shall decide or take part in the decision of any cause or matter which shall have been determined by him while sitting as a judge of any other court. Not to decide certain causes.

SEC. 9. No circuit judge can practice or act as counselor or attorney in any court of this State during his term of office. Judge not to practice as attorney.

SEC. 10. No judge shall have any partner practicing in the circuit court of which he is judge; nor shall any judge be directly or indirectly interested in the costs of any suit that shall be brought in said circuit except in those suits in which he shall be a party, or be interested in the subject matter thereof. Partner.

Costs of suit.

SEC. 11. No judge, commissioner, or other judicial officer, shall demand or receive any fees or other compensation for Not to receive fees for advice, etc.

Drafting papers.	giving his advice in any matter or suit pending before such judge or officer, or which he has reason to believe will be brought before him for decision; or for drafting or preparing any papers or other proceedings relating to any such matter or suit; except in those cases where fees are expressly given by law to such judge or officer, for services performed by him.
Business on first day of week.	SEC. 12. No court shall be opened or transact any business on the first day of the week, unless it be for the purpose of instructing or discharging a jury, or of receiving a verdict; but this section shall not prevent the exercise of the jurisdiction of any single magistrate, when it shall be necessary, in criminal cases to preserve the peace, or to arrest offenders.
Criminal cases.	SEC. 13. All writs, process, proceedings and records in any court within this State, shall be in the English language (except that the proper and known names of process, and technical words, may be expressed in the language heretofore and now commonly used), and shall be made out on paper or parchment, in a fair, legible character, in words at length, and not abbreviated; but such abbreviations as are now commonly used in the English language may be used, and numbers may be expressed by Arabic figures, or Roman numerals, in the customary manner.
Writs, process, etc., to be in English.	
How made.	
Abbreviations, etc.	
Appearance by attorney.	SEC. 14. Every person of full age and sound mind, may appear by attorney, as the case may require, in every action or plea by or against him, in any court, or may, at his election, prosecute or defend such action or plea in person; but this provision shall not extend to criminal cases, nor shall any person be permitted to appear on the record in any civil cause in person, when he has an attorney in such case.
Criminal cases, etc.	
Subsequent orders after refusal.	SEC. 15. If an application for an order that an injunction or a writ ne exeat or supersedeas be made to the circuit judge or any person authorized to grant the same, and such order be refused, in whole or in part, or be granted conditionally or on terms, no subsequent application for the same purpose and in relation to the same matter shall be made to any other circuit judge or any other person authorized to grant the same.
Subsequent order void.	SEC. 16. If upon any subsequent application any order be made, it shall be absolutely void, and shall be revoked by the person making it, upon due proof of the facts; and any person making such subsequent application contrary to the foregoing provisions, shall be liable to be fined or imprisoned by the court, or both, in its discretion.
Penalty.	

The Restoration of Lost Records, Papers, or other Proceedings In Courts of Record.

Lost records, etc.	SEC. 17. Whenever any record, paper or proceeding in or relating to any cause or special proceeding pending or determined in any court of record in this State, shall be lost, any person having an interest in the recovery of the lost record, paper or proceeding, may apply to the court having jurisdiction of said cause, or of the record thereof, for an
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order that a duplicate of the lost record, paper or proceeding, be prepared and filed in said court. Duplicate prepared.

SEC. 18. The person making such application shall show to the satisfaction of the court, that the record, paper or proceeding proposed to be restored, once existed, and has been lost, without the fault or connivance, directly or indirectly, of such applicant; and thereupon the court shall direct the manner of proceeding to supply the loss, and the notices which shall be given to parties interested in the application. Application. Court to direct supply of loss.

SEC. 19. The court before whom any such application is pending, may issue subpoenas for, and compel the attendance of witnesses, or may direct the examination of witnesses on interrogatories, and compel such witness to submit to such examination for the purpose of establishing any point in any such proceeding. Witnesses, etc.

SEC. 20. If the court shall be satisfied that the record, paper or proceeding proposed to be substituted for the lost, exhibits all the material facts of the original, an order shall be entered that said substituted record, paper or proceeding, be filed or recorded with the officer to whom belongs the custody of the original; and during the continuance of such loss, the substituted record, paper or proceeding shall have the same effect in all respects and in all places as the original. Order to file substitute. Effect.

CHAPTER V.

Of Proceedings for Contempts.

SECTION 1. Every court of record shall have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct, in the following cases, and no others: Punishment for contempt.

1. Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority; Cases.

2. Any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings;

3. All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, for any misbehavior in such office or trust, or for any wilful neglect or violation of duty therein; for disobedience of any process of such court, or any lawful order thereof, or of any lawful order of a judge of such court, or of any officer authorized to perform the duties of such judge;

4. Parties to suits for putting in fictitious bail or sureties, or for any deceit, or abuse of the process or proceedings of the court;

5. Parties to suits, attorneys, counselors, and all other persons, for the nonpayment of any sum of money ordered by such court to be paid, in cases where by law execution cannot

be awarded for the collection of such sum; the disobedience of or refusal to comply with any order of such court for the payment of alimony, either permanent or temporary, or costs made in any suit for divorce or separate maintenance; and any other disobedience to any lawful order, decree or process of such court;

6. All persons for assuming to be officers, attorneys or counselors of any court, and acting as such without authority; for rescuing any property or persons, which shall be in the custody of an officer by virtue of process issued from such court; for unlawfully detaining any witness or party to a suit, while going to, remaining at, or returning from the court where such suit shall be pending for trial; and for any other unlawful interference with or resistance to the process or proceedings in any action;

7. All persons summoned as witnesses for refusal or neglect to obey such summons, or to attend or to be sworn, or when so sworn to answer any legal and proper interrogatory;

8. Persons summoned as jurors in any court, for improperly conversing with any party to a suit to be tried at such court, or with any other person in relation to the merits of such suit; for receiving communications from any such party, or from any other person in relation to the merits of such suit, without immediately disclosing the same to the court;

9. All inferior magistrates, officers and tribunals, for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law, after such cause or matter shall have been removed from their jurisdiction;

10. The publication of a false or grossly inaccurate report of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decision had in such court;

11. All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any party, or to protect the right of any such party.

Summary
punishment.

SEC. 2. When any misconduct, punishable by fine and imprisonment as declared in the last section, shall be committed in the immediate view and presence of the court, it may be punished summarily, by fine or imprisonment, or both, as hereinafter prescribed.

Notice to
be given.

SEC. 3. When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena.

Attachment
peremptory.

SEC. 4. When any rule or order of the court shall have been made for the payment of costs, or any other sum of money,

and proof by affidavit shall be made of the personal demand of such sum of money, and of a refusal to pay it, the court may issue a precept to commit the person so disobeying to prison, until such sum, and the costs and expenses of the proceeding shall be paid.

SEC. 5. In all cases, other than that specified in the last section, the court shall either grant an order on the accused party, to show cause at some reasonable time, to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court, to answer for such misconduct.

Order to show cause or attachment to arrest.

SEC. 6. When a rule shall have been entered in any court, according to the practice thereof, requiring any officer or other person, to whom any process of such court may have been directed and delivered, to return the same, an attachment for disobedience of such rule may issue according to the practice of the court, to arrest such officer or person, to answer for such disobedience, without special application to the court.

Attachment without special order.

SEC. 7. If the party charged with misconduct be in the custody of any officer, by virtue of an execution against his body, or by virtue of any process for any other contempt or misconduct, the court may award a writ of habeas corpus, to bring up the body of such person, to answer for such misconduct.

Habeas corpus to bring up person.

SEC. 8. In cases where a party is entitled to an attachment against any person, without the special order of the court, and such person shall be in custody, as specified in the last section, a writ of habeas corpus, to bring up such person, may be allowed by any judge of the court, or by any officer authorized to perform the duties of such judge in vacation.

How allowed.

SEC. 9. Such writ shall authorize the sheriff in whose custody such person shall be, to remove and bring him before the court to which the same shall be returnable, and to detain him at the place where such court shall be sitting, until some order be made by the court for his disposition.

Authority of writ.

SEC. 10. When an attachment shall be issued according to the provisions of this chapter, by the special order of any court, such court shall direct the penalty in which the defendant shall give bond for his appearance to answer.

Penalty of bond for appearance.

SEC. 11. In all other cases, when a party shall be entitled to an attachment, without the special order of the court, he shall make application to a judge of the court, or to some officer authorized to perform the duties of such judge, who, upon due proof of the facts and circumstances, shall direct the penalty in which the defendant shall give bond for his appearance to answer the matters alleged against him, and shall indorse such order on the attachment.

When penalty directed by judge, etc.

SEC. 12. Upon arresting any defendant, upon an attachment, to answer for any alleged misconduct, the sheriff shall

Arrest of defendant upon attachment

keep such person in his actual custody, and shall bring him personally before the court issuing the attachment, and shall keep and detain him in his custody, until such court shall have made some order in the premises, unless such defendant shall entitle himself to be discharged, as prescribed in the next section.

Discharge upon giving bond for appearance, etc.

SEC. 13. In cases where a sum shall have been endorsed on any attachment issued by the special order of the court, and where any sum shall have been so endorsed by any judge or other officer, as hereinbefore prescribed, the defendant shall be discharged from arrest on such attachment upon executing and delivering to the officer making the same, in his name of office, and to his assigns, at any time before the return day of such writ, a bond with two sufficient sureties, in the penalty endorsed on such attachment, with a condition that the defendant will appear on the return of such attachment, and abide the order and judgment of the court thereupon.

Discharge only by special order of court.

SEC. 14. When an attachment shall be issued by the special order of the court, a certificate to that effect shall be endorsed thereon by the clerk of such court, and if no sum be specified in which the defendant shall be held to bail on such writ, he shall not be entitled to be discharged from the arrest thereon, upon executing any bond, or in any other manner, unless upon the special order of the court issuing the attachment.

When discharged on bond of \$100.

SEC. 15. When an attachment shall be issued without the special order of the court, and an order specifying the sum in which the defendant is to be held to bail is not endorsed thereon, the defendant shall be discharged from the arrest thereon, on executing a bond in the penalty of one hundred dollars, with sureties, in the same manner, and with the like condition, as hereinbefore specified.

Officer to return bond.

SEC. 16. Upon returning any attachment, the officer executing the same shall return the bond, if any, taken by him of the defendant, which shall be filed with such attachment.

Attachment to compel return.

SEC. 17. The sheriff or other officer to whom any attachment shall be delivered, shall return the same by the return day specified therein, without any previous rule or order for that purpose, and in case of default, an attachment may be issued against him, upon being allowed by a judge of the court, or by an officer authorized to perform the duties of such judge, upon proof of such default; and in such allowance, the cause of issuing the same shall be stated, and that the defendant is not to be discharged upon bail, or in any other manner but by order of the court.

How executed.

SEC. 18. The officer to whom such last mentioned attachment shall be delivered, shall execute the same by arresting and keeping the defendant in his custody, bringing him personally before the court, and detaining him in such custody, until the order of the court.

Affidavits, explanatory.

SEC. 19. When any defendant arrested upon an attachment, shall have been brought into court, or shall have appeared

therein in response to any order to show cause, he shall be permitted to file affidavits controverting or explaining the matters stated in the affidavits upon which such attachment was issued, or order to show cause made, within such reasonable time as the court shall allow, and the court may receive any affidavits, or oral proofs contradictory or confirmatory of the answers of the defendant, and upon all such affidavits and proof, the court shall determine whether the defendant has been guilty of the misconduct alleged.

SEC. 20. Punishment for contempts may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine shall in no case exceed the sum of two hundred and fifty dollars, nor the imprisonment thirty days; except in those cases where the commitment shall have been for the refusal to perform an act or duty which is still within the power of the party to perform.

Punishments
for contempts.

Limit of
fines, etc.

SEC. 21. If an actual loss or injury has been suffered by any party, by the misconduct alleged, the court, in addition to such other penalty as may be imposed, shall order a sufficient sum to be paid by the defendant to such party to indemnify him, and to satisfy his costs and expenses; and in such case the payment and acceptance of such sum shall be an absolute bar to any action by such aggrieved party, to recover damages for such injury or loss.

Indemnifica-
tion.

SEC. 22. When the misconduct complained of consists in the omission to perform some act or duty, which is yet in the power of the defendant to perform, he shall be imprisoned only until he shall have performed such act or duty, and paid such fine as shall be imposed, and the costs and expenses of the proceedings.

Time of im-
prisonment.

SEC. 23. In such case the order and process of commitment shall specify the act or duty to be performed, and the amount of the fine and expenses to be paid.

Order, what
to specify.

SEC. 24. Persons proceeded against according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction shall be had on such indictment shall take into consideration the punishment before inflicted, in imposing sentence.

Indictment
for miscon-
duct.

SEC. 25. If the defendant against whom an attachment shall have been issued and returned served, do not appear on the return day thereof, the court may either award another attachment, or may order the bond taken on the arrest to be prosecuted, or both.

Default of
defendant;
proceedings.

SEC. 26. The court may order an assignment of the bond to any aggrieved party who shall be authorized by the court to prosecute the same, and such party may maintain an action thereon in his own name, as assignee of the sheriff or officer to whom the same was given, in the same manner as in other actions on bonds with condition to perform covenants other than the payment of money.

Assignment
of bond; pro-
secution.

Measure
of damages.

SEC. 27. The measure of the damages to be assessed in such action, shall be the extent of the loss or injury sustained by such aggrieved party, by reason of the misconduct for which the attachment was issued, and his costs and expenses in prosecuting such attachment.

Prosecution
by attorney
general or
prosecuting
attorney.

SEC. 28. If the court shall not order an assignment of such bond as provided in section twenty-six, the court, in case the defendant shall fail to appear according to the condition of the bond taken on the arrest, shall order the same to be prosecuted by the attorney general, or by the prosecuting attorney for the county in which the bond was taken, in the name of the officer who took such bond.

Disposition
of moneys
recovered.

SEC. 29. In such case the whole penalty of the bond shall be forfeited and recovered, and from the moneys collected thereon the court shall order such sum to be paid to the party prosecuting the attachment, as the court ordering the prosecution shall think proper, to satisfy the costs and expenses incurred by him, and to compensate him for any injury he may have sustained by the misconduct for which such attachment was issued; and the residue of such moneys shall be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

Taking in-
sufficient
securities.

SEC. 30. If on the return of an execution, duly issued upon any judgment obtained on such bond, it shall appear that the sureties taken therein were, at the time of taking them, insufficient, and that the officer receiving them had reasonable ground to doubt their sufficiency, he shall be liable in an action on the case to the party aggrieved, who may have prosecuted such suit, for the amount of the judgment recovered by him, and for his costs and expenses in such suit; or if such suit was brought by the attorney general or a prosecuting attorney, an action on the case may in like manner be brought by them, in the name of the people of this State, for the amount of the judgment so recovered; and the same disposition of the moneys collected in such action on the case against such officer shall be made as directed in the last preceding section.

Illness of
defendant.

SEC. 31. Whenever by the provisions of this chapter an officer is required to keep any person arrested upon an attachment in actual custody, and to bring him personally before any court, the inability, from sickness or otherwise, of such person to attend such court personally, shall be a sufficient excuse for not bringing him before such court; nor shall any officer be required, in any case, to confine any person arrested upon an attachment to answer for misconduct in any prison, or otherwise to restrain him of his personal liberty, except so far as shall be necessary to secure his personal attendance.

Confinement
of person
arrested.

CHAPTER VI.

Of the Jurisdiction and Powers of the Circuit Courts at Law
and in Chancery.

SECTION 1. The said circuit courts within and for their respective counties, shall have and exercise original and exclusive jurisdiction, except as otherwise provided: Jurisdiction
at law.

1. Of all civil actions and remedies of whatever name or description, not excepted in the constitution and not prohibited by law, except in cases where exclusive or concurrent jurisdiction shall be given by law to some other court or tribunal;

2. To issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari and ne exeat, and to hear and determine the same, provided that no circuit court shall have jurisdiction to issue the writs of mandamus or quo warranto against State officers;

3. To issue such other writs as may be necessary to carry into effect their orders, judgments and decrees, and give them control over all inferior courts and tribunals within their respective jurisdictions;

4. Said courts shall have jurisdiction in all such other cases and matters as the supreme court shall by rule prescribe;

5. Said courts shall have such appellate jurisdiction and powers as may be provided by law;

6. Said courts shall also have and exercise all the powers usually possessed and exercised by courts of record at the common law, except as now or hereafter modified by the laws of this State, or by rule of the supreme court, for the full exercise of the jurisdiction hereby conferred, and shall have the power to make all orders in any cause pending therein, which may be necessary or proper for carrying into effect the jurisdiction vested in such courts by law, and to give full effect to any judgment of such courts and may enforce any lawful order so made by attachment and proceedings for contempt;

7. Parties to any civil action pending in any circuit court, and parties to any question of difference which might be the subject of any civil action, without bringing suit, may agree upon a case containing the facts of the matter in controversy, and submit the same to the court, and the court shall thereupon hear and determine the cause and render judgment thereon, as in other cases. But if such case be agreed upon without action, it must appear by affidavit that the controversy is real and the proceedings in good faith, to determine the rights of the parties;

8. Said circuit courts may from time to time make rules for regulating the practice of the said courts in matters not covered by rule of the supreme court or by statute.

To be courts
of chancery.

Style.

What suits to
be dismissed.

Jurisdiction
in chancery.

SEC. 2. The several circuit courts of this State shall be courts of chancery within and for their respective counties, the powers of which shall be exercised by the circuit judges thereof; and the name and style of such courts sitting in chancery shall be "the circuit court for the county of , in chancery."

SEC. 3. Such courts shall dismiss every suit concerning property, excepting suits between co-partners, and suits for the enforcement of mechanics' liens, suits for the foreclosure of mechanics' liens, and suits for the foreclosure of mortgages, and suits for the foreclosure of land contracts or other liens upon real estate, where the matter in dispute shall not exceed one hundred dollars with costs to the defendant.

SEC. 4. The powers and jurisdiction of the circuit courts and circuit judges in chancery, in and for their respective counties, shall be co-extensive with the powers and jurisdiction of the courts and judges in chancery in England as existing on March first, eighteen hundred forty-seven, with the exceptions, additions and limitations created and imposed by the constitution and laws of this State. Said circuit court in chancery shall also have jurisdiction and authority:

1. To hear and determine all cases of encroachments upon the public highways, streets, and public alleys, in organized townships, incorporated villages and cities in this State;

2. In all matters concerning nuisances and waste, where there is not a plain, adequate and complete remedy at law, and may grant injunctions to stay and prevent such nuisances and waste;

3. To appoint receivers in all cases pending in chancery, when such appointment is allowed by law, as well in vacation and at chambers as during the sessions of the court;

4. To hear and determine suits instituted by any person claiming the legal or equitable title to lands, whether in possession or not, against any other person not in possession, setting up a claim thereto in opposition to the title claimed by the plaintiff: And, if the plaintiff shall establish his title to such lands, the defendant shall be decreed to release to the plaintiff all claims thereto;

5. A bill of discovery may be filed and the defendant shall be compelled to answer same where the defendant is charged with having given to another person a power of attorney to enter up a judgment, or with having confessed or suffered any judgment purporting to be for a sum or debt due, when in fact nothing, or only a part of the sum mentioned in such power of attorney or judgment is due, with intention to defraud the just creditors of such defendant, or to place the property of the defendant out of the reach of his creditors, or to hold the same in some secret trust or confidence, or for the benefit of such defendant;

6. Whenever an execution against the property of defendant shall have been issued in a judgment at law and shall have been returned unsatisfied in whole or in part, the party

suing out this execution, may file a bill in chancery against such defendant, and any other person, to compel a discovery of any property or things in action belonging to the defendant, and of any property, money or things in action, due to him, or held in trust for him, and to prevent the transfer of any such property, money or things in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund is held in trust as proceeding from some person other than the defendant. The court shall have power to compel such discovery and to prevent such transfer, payment or delivery and decree satisfaction of the money remaining due on such judgment, out of any property, money or other things in action belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by proceedings in chancery, whether the same were originally liable to be taken by execution in law or not: *Provided*, This section shall not apply to property exempt from execution.

Provido,
exempt
property.

CHAPTER VII.

Time and Place of Holding Circuit Courts.

SECTION 1. In every county organized for judicial purposes, there shall be held at least four terms of court in each year.

SEC. 2. The times now fixed for holding the terms of court in the several counties, shall continue to be the times for holding such terms until changed in the following manner: The circuit court of any county may, by order entered upon the journal of said court, change the times of holding such terms in said county from time to time, but such change shall not be effective until the expiration of three months from the date of entry of such order.

SEC. 3. Whenever it shall be deemed unsafe or inexpedient by reason of war, pestilence or other public calamity to hold any court at the time and place appointed therefor, or whenever there shall be no court house in any county, or when the court house shall for any cause be unsafe or unfit for the holding of any court, the judge or judges of the court may appoint any other place and time within the same county as a temporary place for holding such court. The place so appointed shall be deemed the court house of the county for the time being, for all purposes connected with said court.

SEC. 4. Every such appointment shall be made by an order in writing, signed by the judge or judges making the same, and shall be published by advertisement, or in such other manner as shall be required in the order.

SEC. 5. If from any cause the judge of any circuit or superior court shall fail to attend on the first day or any succeeding day of any term, said court shall stand adjourned until the next day in which court may be lawfully held, and shall stand adjourned from day to day until a judge lawfully

Terms.

Terms to
continue
as fixed.
Change
of times.

When judge
may appoint
temporary
place.

How ap-
pointment
made.

Failure of
judge to
attend.

When deemed
in actual
session.

Power of
judge, if
present.

Continuance
till next term.

authorized to hold said court, shall be in attendance. Said courts at law and in chancery, shall on all lawful days and times be deemed to be in actual session from the first day of any term until the first day of the next succeeding term, notwithstanding any formal adjournment thereof: And, if any judge authorized to hold such court, shall at any time be in attendance thereon, he shall have full power to hear, try and determine all causes, matters and proceedings within the jurisdiction of said court which may in a lawful manner be brought before him. Judges of circuit courts may hold court for each other.

SEC. 6. All causes and matters, of whatsoever name or kind, pending at any term of any circuit court, which shall not have been held because of the absence of the circuit judge, shall stand continued till the next term; and all persons bound by recognizance or otherwise to appear at any such court, either as witnesses or parties to any proceedings cognizable therein, shall be bound to appear at the next term of the circuit court appointed to be held in the county; and all such recognizances shall continue in force and be as binding and obligatory on the parties thereto as if no failure of a term had occurred, unless a new recognizance, approved according to law, shall be entered into for such appearance.

CHAPTER VIII.

Joinder and Severance of Causes of Action and the Consolidation of Actions.

What may be
joined.

Court may
separate.

Or may con-
solidate.

Joint or
several
actions.

SECTION 1. The plaintiff may join in one action, at law or in equity, as many causes of action as he may have against the defendant, but legal and equitable causes of action shall not be joined; but when there is more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant, the liability must be one asserted against all of the material defendants, or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice, or when several suits shall be commenced against joint and several debtors, in the same court, the plaintiff may, in any stage of the proceedings, consolidate them into one action. If it appear that any such causes of action cannot be conveniently disposed of together, the court may order separate trials, or whenever several suits shall be pending in the same court, by the same plaintiff against the same defendant, for causes of action which may be joined, the court in which the same shall be prosecuted may, in its discretion, order the several suits to be consolidated into one action.

SEC. 2. When any person shall die, leaving heirs, either in the same or in different degrees; and where several persons shall be, in any other way, entitled to real estate as tenants

in common, or as joint tenants, they may bring a joint action for the recovery thereof, or may bring several actions for their respective shares or interests.

CHAPTER IX.

Limitation of Actions.

SECTION 1. Hereafter no person shall bring or maintain any action for the recovery of any lands, or the possession thereof, or make any entry thereupon, unless such action is commenced or entry made within the time herein limited therefor, after the right to make such entry or to bring such action shall have first accrued to the plaintiff, or to some person through whom he claims, to-wit: Real actions.

1. Within five years, where the defendant claims title to the land in question, by or through some deed made upon a sale thereof by an executor, administrator, guardian or testamentary trustee, or by a sheriff, or other proper ministerial officer, under the order, judgment, decree or process of a court, or legal tribunal of competent jurisdiction within this State, or by a sheriff upon a mortgage foreclosure sale; or through a devise in any will which shall have been probated in this State for fifteen years, during which period no suit in chancery has been brought to test the validity of such devise: *Provided*, That in cases where such fifteen year period has already elapsed such rights of entry or actions shall be barred after two years from the passage hereof, or in case such right has not accrued, then after two years from the accruing thereof; Five years.
Proviso,
two years.

2. Within ten years, where the defendant claims title under a deed made by some officer of this State, or of the United States, authorized to make deeds upon the sale of lands for taxes assessed and levied within this State; Ten years.

3. Within fifteen years in all other cases: *Provided*, That the provisions of this section shall not apply to actions brought by any municipal corporation, for the recovery of the possession of any public highway, street or alley, or any other public grounds. Fifteen years.
Proviso,
section not
to apply.

SEC. 2. If such right or title first accrued to an ancestor, predecessor, or grantor of the person who brings the action, or makes the entry, or to any other person from or under whom he claims, the said above periods of limitation shall be computed from the time when the right or title so first accrued to said ancestor, predecessor, grantor or other person. Where right
accrued to
ancestor,
grantor, etc.

SEC. 3. In the construction of this chapter, the right to make an entry or bring an action to recover land, shall be deemed to have first accrued at the times respectively herein-after mentioned, that is to say: When right
of entry
accrues.

1. Whenever any person shall be disseized, his right of

entry or of action shall be deemed to have accrued at the time of such disseizin;

2. When he claims as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is another estate, intervening after the death of such ancestor or deviser, in which case his right shall be deemed to accrue when such intermediate estate shall expire, or when it would have expired by its own limitation;

3. When there is such an intermediate estate, and in all other cases, where the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which he might have entered at an earlier time;

4. The preceding clause shall not prevent any person from entering, when entitled to do so by any forfeiture, or breach of condition, but if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred, or the condition broken;

5. In all cases not otherwise provided for, the right shall be deemed to have accrued when the claimant or the person under whom he claims, first became entitled to the possession of the premises, under the title upon which the entry or action is founded.

Who
presumed
to have
possession.

SEC. 4. In every action for the recovery of real estate or the possession thereof, the person establishing the legal title to the premises shall be presumed to have been in possession thereof within the time limited by law for bringing such action, unless it shall appear that the same has been possessed adversely to such legal title by the defendant or by those from or under whom he claims, or that the grantee, or his assigns, in a contract of purchase have been in possession claiming title by virtue of said contract of purchase for a period of twenty years after the last payment was due on said contract or after the last payment was made on said contract of purchase. The provisions of this section shall not apply to any contract of purchase which is now the subject of litigation.

Disability.

SEC. 5. If at the time when any right of entry, or of action, as aforesaid, shall first accrue or have accrued, the person entitled to such entry or action shall be or shall have been, within the age of twenty-one years, insane, or imprisoned, such person, or any one claiming from, by or under him, may make such entry, or bring such action, at any time within five years after such disability shall be or shall have been removed, although the time limited therefor in the first section of this chapter may have expired.

Death during
disability.

SEC. 6. If the person first entitled to make such entry, or bring such action, shall die, or shall have died during the continuance of any of the disabilities mentioned in the preceding section, and no determination or judgment shall have been had of, or upon the title, right or action, which accrued

to him, the entry may be made, or action brought, by his heirs, or any one claiming under him, at any time within five years after his death, although the time limited therefor in the first section of this chapter may have expired.

SEC. 7. If, at the time when such right of entry or of action shall first accrue, the person entitled thereto shall be under any of the disabilities before mentioned, and shall die without having recovered the premises, no further time for making such entry or bringing such action, beyond that hereinbefore prescribed, shall be allowed by reason of the disability of any other person.

No allowance for disability of other person.

SEC. 8. No person shall be deemed to have been in possession of any lands, within the meaning of this chapter merely by reason of having made an entry thereon, unless he shall have continued in open and peaceable possession of the premises for at least one year next after such entry, or unless an action shall be commenced upon such entry and seizin, within one year after he shall be ousted or dispossessed of the premises.

Mere entry not sufficient.

SEC. 9. All actions and rights shall be governed and determined according to the law under which the right accrued, in respect to the limitations of such actions or right of entry.

Rights governed by existing law.

SEC. 10. If any action, of which the commencement is limited by this chapter, shall be abated by the death of any party thereto, or if, after verdict for the plaintiff, the judgment shall be arrested, or if judgment in any such action be given for the plaintiff, and the judgment shall be reversed for error therein, the plaintiff, or any person claiming from, by or under him, may bring an action for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment.

Action after abatement, reversal of judgment, etc.

SEC. 11. No suit for the recovery of any land, shall be commenced by or in behalf of the people of this State, unless within fifteen years after the right or title of the people of the State therein first accrued, or within fifteen years after the said people or those from or through whom they claim, shall have been seized or possessed of the premises, or shall have received the rents and profits of the same, or some part thereof.

Suits by people.

SEC. 12. No suit or proceeding shall be maintained to foreclose a mortgage on real estate, either at law or in equity, unless commenced within fifteen years from and after such mortgage shall become due and payable, or within fifteen years after the last payment was made on said mortgage.

Foreclosure of mortgages.

Limitation of Personal Actions.

SEC. 13. All actions in any of the courts of this State shall be commenced within six years next after the causes of action shall accrue, and not afterward, except as hereinafter specified: *Provided, however,*

Six years.

1. That actions founded upon judgments or decrees rendered in any court of record of the United States, or of this

Proviso, other limitations.

Ten years.	State, or of some other of the United States, and actions founded upon bonds of public officers, actions founded upon covenants in deeds and mortgages of real estate, may be brought at any time within ten years from the time of the rendition of such judgment, or the time when the cause of action accrued on such bond or covenant;
Three years.	2. Actions to recover damages for injuries to person or property shall be brought within three years from the time said actions accrue, and not afterwards;
Two years.	3. Actions against sheriffs for the misconduct or neglect of themselves, or their deputies, actions for trespass upon lands, for assault and battery, for false imprisonment, for malicious prosecution, for libel or slander, for malpractice of physicians, surgeons or dentists, all actions for the recovery of any penalty or forfeiture on any penal statute brought in the name of the people of this State, and actions brought to charge any surety for costs, or on bond or recognizance given on appeal from any court in this State, shall be brought within two years from the time the cause of action accrues, and not afterwards:
Further proviso, four years.	4. <i>Provided further</i> , That actions brought to charge any surety on any bond of an executor, administrator or guardian, may be, and in all cases shall be brought at any time within four years after the discharge of such executor, administrator or guardian.
Accounts current.	SEC. 14. In actions brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account.
Disability.	SEC. 15. If any person entitled to bring any of the actions mentioned in this chapter shall, at the time when the cause of action accrues, be within the age of twenty-one years, insane, or imprisoned in the State prison, such person may bring the action within the times in this chapter respectively limited, after the disability shall be removed.
Aliens.	SEC. 16. When any person shall be disabled to prosecute an action in the courts of this State, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed a part of the respective periods herein limited for the commencement of any of the actions before mentioned.
Absence of defendant from state.	SEC. 17. If at the time when any cause of action shall accrue against any person, he shall be out of the State, the action may be commenced within the time herein limited therefor, after such person shall come into this State; and if after any cause of action shall have accrued, the person against whom it shall have accrued shall be absent from this State, any and all periods of absence in excess of two months at one time, shall not be taken as any part of the time limited for the commencement of the action.
Death of party.	SEC. 18. If any person entitled to bring any of the actions before mentioned in this chapter, or liable to any such ac-

tions, shall die before the expiration of the time herein limited, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person or the claim may be proved as a debt against the estate of the deceased person, as the case may be, at any time within two years after granting letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

SEC. 19. If, in any action, duly commenced within the time limited in this chapter, and allowed therefor, the writ or declaration shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ be abated or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

Abatement
of action,
reversal, etc.

SEC. 20. If any person who is liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within two years after the person who is entitled to bring the same shall discover that he had such cause of action, although such action would be otherwise barred by the provisions of this chapter.

Fraudulent
concealment.

SEC. 21. In actions founded upon contract express or implied, no acknowledgment or promise shall be evidence of a continuing contract, whereby to take a case out of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, signed by the party to be charged thereby.

New promise
to be in
writing.

SEC. 22. If there be two or more joint contractors or joint executors or administrators of any contractor, no such joint executor or administrator shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason of any acknowledgment or promise, made or signed by any other or others of them.

Promise by
one joint
contractor,
etc.

SEC. 23. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the

Proceedings
in actions
against joint
contractors,
etc.

plaintiff as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

Answer to motion to dismiss on account of non-joinder.

SEC. 24. If in any action on contract, the defendant shall move to dismiss on the ground that any other person ought to have been jointly sued, it shall be a good answer to such motion, if true in fact, that the action was, by the provisions of this chapter, barred against the person so named in such motion, but was not so barred by reason of such acknowledgment or promise, as against such defendant.

Part payment.

SEC. 25. Nothing contained herein shall alter, take away, or lessen the effect of a voluntary payment of any principal or interest, made by any person; but no endorsement or memorandum of any such payment written or made upon any promissory note, bill of exchange or other writing by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

Joint contractors, etc.

SEC. 26. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable by reason only of any payment made by any other or others of them.

Bar of set-offs.

SEC. 27. The provisions of this chapter shall not be deemed to bar a claim made by way of set-off, unless such claim for set-off was barred at the time plaintiff's cause of action accrued.

Actions by people.

SEC. 28. The limitations hereinbefore prescribed for the commencement of actions, shall apply to the same actions when brought in the name of the people of this State, or in the name of any officer or otherwise, for the benefit of the State, in the same manner as to actions brought by individuals.

Time of suit pending in chancery.

SEC. 29. The time during which any case in chancery, commenced by any debtor, has or may be pending and undetermined, shall not be computed as constituting any part of the period limited or prescribed by any statute of limitations in force at the time of the commencement of such case in chancery, prescribing the time within which an action in relation to the debt or subject matter in dispute, as set forth in the proceedings in such case in chancery should or might be commenced.

CHAPTER X.

Place for the Commencement of Actions and Change of Venue.

Where to be commenced.

SECTION 1. Actions shall be commenced and tried in the proper county as follows:

Real estate.

1. Actions for the recovery of any real estate, or the possession thereof; for trespass on lands; and for injuries to real estate and actions of replevin shall be commenced and tried

in the county where the subject of the action shall be situated;

2. All actions founded upon wrongs, and contracts, except as herein otherwise provided, shall be commenced and tried in the county where one of the parties shall reside at the time of commencing such action; Wrongs, contracts, etc.

3. Suits may be commenced against any street railway or railroad company in any county where the principal office of such company within the State may be situated, or in any county traversed by a line of railroad, owned or operated by such company, or in any county in which such company shall be the owner or lessee of a right of way for a line of road: *Provided*, That if such line of road traverses the county of the plaintiff's residence, suit shall be brought in such county; Railways, etc.
Proviso, railroad in plaintiff's county.

4. Suits may be commenced against foreign and domestic insurance companies, fraternal co-operative and mutual benefit associations, having for their object insurance against fire, death, sickness, accident, or any form or risk whatever; and against foreign and domestic surety and bonding companies, in the circuit court of any county in this State, in which the plaintiff resides, and in which such company is authorized to issue policies, or take risks. Insurance companies, etc.

5. In cases where the plaintiff is a resident of the State of Michigan, suits may be commenced in any county where the plaintiff resides, against any corporation not organized under the laws of this State; and where the plaintiff is a non-resident of the State of Michigan, where the cause of action accrued within the State of Michigan, such plaintiff may bring action in the county where the cause of action accrued; Corporations.

6. Suits may be commenced against any corporation doing a telegraph, telephone or an express business, in this State, in any county within which any such company maintains an office, or exchange, for the transaction of business; Telephone, telegraph and express companies.

7. Suits may be commenced against any person, firm or corporation, whether resident or non-resident, in the State of Michigan, engaged in the business of maritime commerce, or navigation, within the State, in the courts of any county in this State, in which the boats of such person, firm or corporation, call and do business; Persons in maritime commerce, etc.

8. Suits against public officers, or against any person specially appointed to execute orders of such officers, for any act done by them, by virtue of their offices respectively; and suits against other persons, who by the command of such officers, or in their aid or assistance, do anything touching the duties of such office, shall be commenced and tried in the county where the fact happened; Public officers.

9. Every action for any penalty or forfeiture shall be commenced and tried in the county where the act was done, or where the act omitted was required, in whole or in part to be done, upon which the penalty or forfeiture attached; Penalties or forfeitures.

10. All suits commenced in this State by order of a probate court, upon any bond required by law to be filed with such court, shall be commenced and tried in the county where such bond is filed; Probate bonds.

Attachments.

11. Suits may be commenced by attachment in any county, as provided in the chapter hereinafter contained relating to attachment proceedings;

Chancery suits.

12. Every suit in chancery shall be commenced in the circuit court for the county in which the property in dispute is situated, if the subject matter is local, and if it is not local, in the county where one of the parties in interest resides, if either is a resident of the State; but if the subject matter is not local, and neither party resides in the State, the suit may be brought in any county; and where it is necessary to file an information or bill in chancery, either to compel the specific performance of contract, cancellation of patents from the State, quiet title, or otherwise to affect real estate and when such real estate may be situated in different counties, it shall be competent to file such information or bill on the equity side of the circuit court of any one of said counties in which a part of said real estate may be situate; and such court shall have complete jurisdiction in the premises as fully and effectually as if the whole of such estate were situate in the county in which suit may be commenced. And when it may be necessary to file a bill or information or to commence any proceedings in chancery on the party [part] of or in behalf of the State, the same may, at the election of the Attorney General, be commenced in the circuit court for the county of Ingham on the equity side thereof, and said court shall have complete jurisdiction and full power and authority in the premises: *Provided*, That if the court shall deem it necessary for the convenience of parties and their witnesses, to order such issues to be tried in some other county, the same shall be tried in the county so designated: *Provided further*, That nothing in this section contained shall be construed to abrogate or repeal any provision of section seventeen of act number eighty-two of the Public Acts of eighteen hundred seventy-three, the same being section seven thousand two hundred eighty-two of the Compiled Laws of eighteen hundred ninety-seven, relating to suits by receivers of mutual fire insurance companies for assessments levied by them, nor of section eleven of act two hundred fifty-five of the Public Acts of eighteen hundred ninety-nine, relating to the prevention of trusts, etc.

Proviso, trial in other county.

Further proviso, certain acts not repealed.

Change of Venue.

Court may change venue, on cause shown.

SEC. 2. Each of the circuit courts, upon good cause shown, may change the venue in any civil cause pending therein, and direct the issue to be tried in the circuit court of another county, and make all necessary rules and orders for certifying and removing such cause, and all matters relating thereto, to the court in which such issue shall be ordered to be tried, and such court shall thereupon have full jurisdiction of such cause the same as though such cause had been originally commenced therein; and in every such case, all expenses of such

trial which would be chargeable to the county in which the suit originated, had the cause been tried therein, as determined by the circuit judge of the county to which said cause has been transferred, shall be a charge upon the county in which the suit was commenced.

Expenses
of trial.

Transfer of Causes.

SEC. 3. Whenever any civil suit or proceeding shall be pending in any circuit court in this State, either on the law or equity side of said court, in which the judge of said court shall be interested as a party, or as a member of any corporation which is a party to said suit, or has heretofore been consulted or employed as counsel in the subject matter to be litigated in said suit, or in which for any other reason he would be excluded from sitting as judge at the trial thereof the same may be transferred to some other circuit court in the manner hereinafter provided, or the judge of the circuit court in which such suit is pending may call in any other judge not disqualified to sit in such cause.

When cause
may be
transferred.

May call in
other judge.

SEC. 4. Any party desiring to transfer any such suit or proceeding as hereinbefore mentioned, may apply to the judge of any adjoining circuit, who is not within the disqualifications mentioned in the preceding section, for an order to transfer such suit; such application shall be in writing and shall set forth specifically the grounds for such transfer. The parties to any such suit may, by stipulation in writing, consent to the transfer of such suit or proceeding without any application to the judge, in which case the stipulation shall have the same effect as an order duly made for such transfer.

Application
for transfer.

Transfer by
stipulation.

SEC. 5. On receiving such application the judge shall appoint a time and place of hearing the same, and shall from time to time, as may be necessary, direct the manner in which notice of such hearing shall be given to all parties interested in such application.

Hearing.

Notice.

SEC. 6. On the day appointed for such hearing or on some other day to which said hearing may be adjourned, when it shall appear that the notice of such hearing has been duly given, the judge shall proceed to hear and determine the application for such transfer, and for this purpose may issue subpoenas for witnesses, and require their attendance as in other cases, and he shall hear the proofs and allegations of the parties touching the application before him, and if he shall be satisfied that the judge of the circuit court where such suit is pending is disqualified to sit in said cause within the intent and meaning of section three of this chapter, he shall grant an order for the transfer of said cause or proceeding to the circuit court of some other county, which county shall be specified in said order.

Order
for transfer.

SEC. 7. In case the parties to said suit or proceeding shall by stipulation in writing or otherwise agree upon the circuit court of the county to which said cause shall be trans-

Determina-
tion of court
for trial.

ferred, said circuit judge shall make an order of transfer in accordance therewith; but if no such agreement be reached said judge shall hear such proofs as may be offered by the parties, and such suit or proceeding shall be transferred to the circuit court of the county in which the same can be tried with the most convenience, expedition and economy to the parties interested, and in which the circuit judge shall not be disqualified to sit within the provisions of section three of this chapter.

Jurisdiction of court to which transferred.

SEC. 8. On filing the order of the judge granted as aforesaid in which the proceedings before said judge shall be briefly recited, with the clerk of the court to which said suit or proceeding is by said order directed to be transferred, the said court shall have jurisdiction of the same to the same extent as if said cause or proceeding had been legally commenced in said court and may grant such orders as may be necessary to procure the transfer of the existing files and orders in said cause or proceeding to said court, and to cause due notice of such transfer to be made.

Notice of transfer.

Clerk or register to transfer papers and copies of records.

SEC. 9. Upon delivering to the clerk of the court where said cause or proceeding was pending before said transfer, a copy of said order of transfer duly certified by the clerk of the court in which said order shall be filed, the said clerk to whom said certified copy shall be delivered, shall attach together the originals of all the papers filed in said suit or proceeding, and shall make true copies of all the orders made therein, and which are entered upon books of record in said court, and shall transmit the same, certified under his hand and seal to be the originals of such files and true copies of such orders, to the clerk of the court in which said order of transfer shall have been filed; which files and copies when so filed and deposited in the office of the clerk to whom said transfer is to be made, shall have the same force and effect in all respects, and shall be subject to the rules and orders of said court as other original proceedings therein.

Effect of files and copies.

Fees of clerk.

SEC. 10. The clerk who shall be required under the provisions of the preceding section to transmit the files and orders in any cause or proceeding, as herein provided, shall be entitled to six cents per folio for all copies of orders and proceedings which shall be necessarily made, and one dollar in addition thereto, which shall be in full for all services rendered under said section.

CHAPTER XI.

Forms of Actions.

Division of actions.

Actions retained.

SECTION 1. Civil actions are divided into equitable actions and actions at law. The following actions at law are retained, namely, actions of assumpsit, trespass on the case, replevin, ejectment, certiorari, mandamus and quo warranto. All other forms of actions at law are abolished. In all cases where

the actions of covenant or debt would be otherwise maintainable, the action of assumpsit shall hereafter be brought, and in all cases where actions of trespass or trover would be otherwise maintainable, the action of trespass on the case shall be brought: *Provided, however,* That in case of trespass on lands, and in cases where an action on the case for fraud or deceit may by law be brought, and in cases of the conversion of personal property into money, the plaintiff may bring and maintain either an action of assumpsit, or an action of trespass on the case. In all cases not otherwise specially provided for by law, where a pecuniary penalty or forfeiture shall be incurred by any person, and the act or omission for which the same is imposed, shall not also be a misdemeanor, such penalty or forfeiture may be recovered in an action of assumpsit. In all such cases where assumpsit is brought, a promise shall be implied by law to pay all just damages sustained by plaintiff and may be so declared upon. Actions pending at the time this act takes effect shall not in any wise be affected by the provisions of this section.

Assumpsit.

Trespass on case.
Proviso, either action.

Penalties or forfeitures.

Promise implied.

Sec. 2. If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, or if it appear that an action commenced on the law side of the court should have been brought in equity, it shall be forthwith transferred to the proper side, and be there proceeded with, with only such alteration in the pleadings as shall be essential.

Transfer of suits and actions to proper side of court.

CHAPTER XII.

Parties to Actions.

SECTION 1. In civil actions, both at law and in equity, the party bringing the action shall be described as plaintiff, and the party against whom the action is brought shall be described as defendant.

Plaintiff and defendant.

Sec. 2. Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought: *Provided,* That any person to whom a cause of action shall accrue upon the bond of any public officer, required to give bond to the people of this State, may prosecute a suit for recovery on said bond in his own name: *Provided further,* That actions upon any bond, contract or undertaking lawfully made with any officer of this State, or of any county, township, school district, city or village, or to enforce any liability or any duty enjoined by law to said officer, shall be brought in the corporate name of the body for whose benefit such contract was made, or such liability or duty enjoined.

In whose name actions brought.

Proviso, actions on official bonds.

Further proviso, actions on personal bonds.

Actions in corporate name.	<p>SEC. 3. Any suit or proceeding brought for the enforcement of any corporate liability against any of the corporate bodies, enumerated in the second proviso of section two of this chapter, shall be brought against them in their corporate name; but any suit or proceeding brought to enforce the performance of an official duty on the part of any officer of any such corporate body, shall be brought against such officer in his official capacity.</p>
Actions against public officers.	
Limited partnerships.	<p>SEC. 4. Suits by and against limited partnerships shall be subject to the provisions of section eighteen of chapter thirty-three of the Revised Statutes of eighteen hundred forty-six, the same being compiler's section six thousand seventy-two of the Compiled Laws of eighteen hundred ninety-seven.</p>
Married woman.	<p>SEC. 5. Actions may be brought by and against a married woman in relation to her sole property, in the same manner as if she were unmarried, and in cases where the property of the husband cannot be sold, mortgaged or otherwise encumbered, without the consent of his wife, to be given in the manner prescribed by law, or when his property is exempted by law from sale on execution or other final process issued from any court against him, his wife may bring an action in her own name, with the like effect as in cases of actions in relation to her sole property as aforesaid.</p>
May sue or be sued as if sole.	<p>SEC. 6. Whenever a cause of action shall accrue to, or arise against any married woman, she may sue or be sued in the same manner as if she were sole.</p>
Husband and wife.	<p>SEC. 7. No suit shall be brought against husband and wife, jointly, or against the husband alone, for any tort of the wife, unless such tort was committed under such circumstances as to render them both liable.</p>
Death, etc., of public officer or trustee not to abate suit.	<p>SEC. 8. When an action is authorized or directed by law to be brought by or in the name of a public officer, or by any trustee appointed by virtue of any statute, his death or removal shall not abate the suit, but the same may be continued by his successor, who shall be substituted for that purpose by the court and a suggestion of such substitution shall be entered on the record.</p>
Superintendents of poor.	<p>SEC. 9. Causes of actions accruing to or against the superintendent of the poor of any county, shall be prosecuted by or against such superintendents of the poor in their corporate name.</p>
Plaintiffs and defendants in equitable actions.	<p>SEC. 10. In all equitable actions, all persons having an interest in the subject of the action and in obtaining the relief demanded, may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons having a united interest must be joined on the same side as plaintiffs or defendants, but when any one refuses to join, he may for such reason be made a defendant.</p>
Necessary parties. United interests.	
Intervention.	<p>SEC. 11. In an action either at law, or in equity, anyone claiming an interest in the litigation may, at any time, be</p>

permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding.

SEC. 12. Whenever any unincorporated voluntary association, club or society, shall be formed in this State, composed of five members or more, having some distinguishing name, actions at law or in chancery may be brought by or against such association, club or society by the name by which it is known: *Provided*, That this section shall not take away the right of the litigant to proceed against all the members of such association, club or society, if such litigant shall so elect to proceed.

Unincorporated
voluntary
associations.

Proviso,
right to sue
members.

SEC. 13. No action at law or in equity shall be defeated by the non-joinder or mis-joinder of parties. New parties may be added and parties mis-joined may be dropped, by order of the court, at any stage of the cause, as the ends of justice may require.

Non-joinder or
mis-joinder.

SEC. 14. No change in parties, made by order of court, shall impair any previous attachment of the estate or body of any person remaining a defendant in the action; nor impair bonds or recognizances of any person remaining a party either as against himself or his sureties; nor impair receipts to an officer for property attached; and, when parties are changed, the court may order new bonds if such new bonds are deemed necessary. Orders of court concerning change in parties may be upon terms at the discretion of the court.

Change in
parties not to
impair attach-
ment, bonds,
etc.

New bonds if
necessary.

Changes made
upon terms.

SEC. 15. It shall be lawful for any plaintiff to include in one action as defendants, all or any of the parties who may be severally, or jointly and severally liable, and to proceed to judgment and execution according to the liability of the parties.

Joinder of
defendants.

SEC. 16. The rights and responsibilities of the several parties to any bill or note, as between each other, shall remain the same as they now are by law; saving only the rights of the plaintiff, so far as they shall be determined by the judgment.

Rights of
parties to
bill or note.

SEC. 17. All Indians shall be capable of suing and being sued, in any of the courts of this State in like manner and with the same effect, as other inhabitants thereof, and shall be entitled to the same judicial rights and privileges.

Indians.

SEC. 18. A foreign corporation created by the laws of any other state or country, may prosecute in the courts of this State, in the same manner as corporations created under the laws of this State, upon giving security for the payment of the costs of suit, in the same manner that non-residents are required by law to do.

Foreign
corporations.

Security
for costs.

SEC. 19. But when, by the laws of this State, any act is forbidden to be done by any corporation, or by any association of individuals, without express authority by law, and such act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied,

Forbidden
acts, no
action may be
maintained
upon.

arising out of, or made or entered into in consideration of such act.

As to Suits in Chancery Against Unknown Defendants, Etc.

How unknown parties made defendants.

SEC. 20. In all suits and proceedings in chancery, if there be any person interested in the same or in the subject matter involved therein, or whose name appears in the records of any public office as having at any time claimed any right, title, interest or estate in the subject matter of the suit or any portion thereof or any lien or charge thereon without having conveyed or released the same, or who might at any time under the provisions or legal effect of any instrument of record claim or be entitled to claim any benefits thereunder, and it is not known whether such person is living or dead, or where he may reside if living, or whether the title, interest, claim, lien or possible right has been by him assigned to any person or persons, or if dead whether he has personal representatives or heirs living or where they or some of them may reside, or whether such title, interest, claim, lien or possible right has been disposed of by will, it shall be lawful to make such person and every one claiming under him defendants in such suit or proceeding by naming such person and adding the words "or his unknown heirs, devisees, legatees and assigns," which shall include and be construed to include all persons claiming in any manner under the person named as originally interested in such subject matter. If the subject matter be real estate such addition shall include and be construed to include all persons who might claim under the person named any dower or homestead right, whether the same shall be vested or inchoate at the time of beginning such suit or proceeding. In all suits and proceedings in chancery, if there be persons interested in the same, as heirs of some person or persons deceased, whose names are unknown, it shall be lawful to make such unknown heirs parties defendant to such suit or proceeding by the name and description of unknown heirs of such deceased person.

Who included.

Who may begin proceedings.

SEC. 21. Proceedings hereunder may be begun by any person, corporation or partnership association claiming any vested or contingent interest, or any estate in possession, expectancy, reversion, or remainder, in the subject matter of the suit or any undivided part thereof or any estate for years therein, or who has conveyed any interest therein with covenants of title or warranty; and may be brought against all persons, corporations or partnership associations who may be in possession of the subject matter or who appear in any public record or in the record of any corporation to have or claim, or to have had or claimed, any title or interest in or lien upon such subject matter without having conveyed or released the same, including the makers of any conveyance or release which is uncertain or ambiguous in its terms, or contains any misdescription of the premises, or which is executed in such a manner as to make its validity doubtful or uncer-

Against whom brought.

tain; also against all persons, corporations or partnership associations who, by reason of any provision, limitation, restriction, stipulation, charge, agreement or uncertainty contained in any deed, plat, will or other instrument of record, whether void upon its face or not and whether seemingly extinguished or made void by some other title or by some statutory provision or not, might be entitled in any contingency to enforce the same or make any claim thereunder. If there is any class of persons in whose favor any such provision, limitation, restriction, stipulation, charge, agreement or uncertainty might be enforced, and such persons are unascertained or not in being, they may be made defendants in any suit or proceeding hereunder, and bound by any decree made therein, by being designated as all persons who are or may become entitled to claim under the particular provision, limitation, restriction, stipulation, charge, agreement or uncertainty set forth in the bill of complaint or petition, which shall also be set forth at length in connection with every publication of every order by which notice is given to defendants in such class of the pendency of the suit or proceeding. The court may require the moving party by amendment to describe any defendant or defendants more particularly if in the opinion of the court that should be done.

Court may require more particular description.

SEC. 22. Whenever suit is brought under the provisions of sections twenty to twenty-seven inclusive of this chapter to quiet the title to real estate, no one whose actual or possible title, claim or lien is sought to be removed or construed, and whose name appears of record in some public office in connection therewith, may be made defendant in accordance with the preceding sections, except under his proper name or the name appearing in such record, nor shall his unknown heirs, devisees, legatees and assigns be included as defendants therein, unless fifteen years have elapsed since the recording of such title, claim or lien. When any one against whom proceedings under sections twenty to twenty-seven inclusive of this chapter might otherwise be brought is known to be dead, and some of the persons who might claim under him and their places of residence are known, such of them as are known shall be named as defendants and brought before the court in the manner provided by law, and all others who might claim under such deceased person may be included as unknown defendants.

Suits to quiet title.

Parties defendant.

SEC. 23. Any corporation or partnership association, the existence of which has terminated from any cause or which has no officer or agent in this State upon whom process may be served at the time when any suit is commenced under said sections twenty to twenty-seven, may be made a defendant in such suit and notified under the name by which it was formerly known in law, and in and by the order of publication herein provided for, to appear and defend such suit, and all persons who were or are stockholders or creditors of such corporation or partnership association may appear and de-

Corporations or partnership associations as defendants.

fend such suit in conformity with the provisions of law as in other causes in chancery.

Bill to be sworn to.

Statements of affiant.

Order for appearance.

Description of lands.

Subsequent proceedings.

Proviso, guardians, etc.

Further proviso, re-opening case.

Rehearing, notice of.

Appearance of parties interested.

SEC. 24. Whenever defendants are named in any suit or proceeding as the unknown heirs, devisees, legatees and assigns of any person, or are included in any class of unnamed persons, the bill of complaint or petition shall be sworn to by the moving party, his agent or attorney, and shall state that the affiant does not know and has been unable after diligent search and inquiry to ascertain the names of the persons who are included as defendants therein without being named. Upon the filing of such pleading an order shall be entered by the circuit judge of the county in which such proceeding is pending or by a circuit court commissioner of such county, for the appearance of every defendant in such suit or proceeding who cannot, by reason of being unnamed or otherwise, be personally served with process within three months from its date. If the suit is concerning lands every publication of such order shall be followed by a description of such lands as described in the bill of complaint, and a statement that the suit involves the title to such lands or is brought to quiet the title thereto.

SEC. 25. All subsequent proceedings including publication of said order shall be taken in the same manner and with like effect as though all defendants were named therein by their proper names, and as to unnamed defendants and such as are not known to be living shall be in conformity with the statutes relating to defendants who reside in another state: *Provided*, That a guardian or guardians ad litem shall be appointed in accordance with the rules and practice of the court in the case of incompetent persons, to represent all unknown or unascertained defendants, and all known defendants who are infants or incompetent: *Provided further*, That the court before which said cause is heard, on a proper showing by affidavit that one or more of the defendants did not have actual notice of said suit in time to appear and defend the same, may in its discretion, at any time not later than three years after the entry of the final decree, reopen said case and order a re-hearing as to the rights of such defendant or defendants who shall serve a copy of such affidavit and order and notice of all subsequent proceedings in the case on the plaintiff or his attorney and on all defendants who appeared on the original hearing, or their attorneys.

SEC. 26. Any person interested in his own right, or as a stockholder or creditor of any defunct corporation or partnership association, or as an heir, devisee, legatee or assignee of some other person, or otherwise, in the subject matter of such suit or proceeding, and who desires to appear in such suit or proceeding, may, upon filing an affidavit in the office of the clerk in chancery of the county where such suit or proceeding is pending showing his interest in such suit or proceeding, enter an order of course therein that the same shall, as far as he is concerned, proceed against him in his proper

name as a co-defendant with the other persons defendant therein as herein provided, and upon service of a copy of said affidavit and order and notice of the filing and entry thereof upon the plaintiff or his attorney, together with notice of entry of the usual order of appearance, said cause shall from that time proceed as in all other causes in chancery, but the right and interest of such person so appearing shall be open to question upon the hearing of such cause or proceeding and in any other manner now provided by law.

SEC. 27. On the hearing of any such suit or proceeding, if the allegations of the bill or petition are proven to the satisfaction of the court, and if it shall appear that the claims or possible rights of the defendants in the subject matter of the suit are of no validity and ought to be barred, the court shall decree accordingly; or if there are valid liens existing, or possible, uncertain or doubtful conditions to be construed, it shall make a decree determining their nature, validity or extent which shall determine the rights of all parties plaintiff or defendant, and shall be effectual to exclude all parties to such suit contrary to such determination, and shall have the same effect as a release by the holder thereof of every actual or possible claim which such decree shall find to be without validity, and if the effect of such decree is to quiet the title to lands, or if it in any way concerns the title to real estate, a certified copy thereof may be recorded in the office of the register of deeds of any county where said lands or any part of the same are situated. The court may award costs in its discretion.

Decree.

Effect.

Record
of decree.

Costs.

Suits by and Against Infants and Persons Under Disability.

SEC. 28. Whenever an infant, or a person who is insane or otherwise mentally incompetent, shall have a right of action, he shall be entitled to maintain a suit thereon, but before the declaration or bill of complaint is filed or any process issued in the name of such person who is sole plaintiff, the circuit judge or circuit court commissioner of the same county shall appoint a competent and responsible person to appear as next friend for such plaintiff, who shall be responsible for the costs of suit, and the order for such appointment shall be forthwith filed in the office of the clerk of the court in which said action is to be begun. But in case such plaintiff has a guardian of his estate, it shall be competent for such guardian to bring such action.

Incompetent
persons
may sue.

Next friend.

Guardian.

SEC. 29. If the plaintiff shall be an infant over the age of fourteen years, such appointment shall be made upon the petition of such infant, and in all other cases such appointment shall be made upon the petition of the next of kin of such plaintiff, or other relative or friend whom the officer to whom such petition shall be presented shall deem a proper person to make such petition, and upon the written consent of the person proposed to be the next friend to such plaintiff, duly acknowledged before any officer authorized by law to

How next
friend
appointed.

Proviso, bond. take acknowledgment of deeds: *Provided*, That before such next friend shall be appointed in any suit to recover any debt or damages, he shall, if required by the officer to whom application for such appointment is made, execute a bond to such plaintiff, in the penalty at least double the amount claimed in said suit, with such sureties as shall be approved by such officer, conditioned that such next friend shall duly account to such plaintiff for all moneys that may be recovered in such suit, which bond shall be delivered to the officer making the appointment, and shall be by him filed in the office of the judge of probate of the county where the infant resides.

Guardian ad litem for incompetent person.

How appointed.

SEC. 30. After the service of process or declaration, if the suit be commenced by declaration, against a defendant who is an infant, or who is insane or otherwise mentally incompetent, said suit shall be defended by the guardian of the estate of such defendant, if there be one; otherwise such suit shall not be further prosecuted until a guardian ad litem for such person shall be appointed in the manner following: If the defendant be an infant more than fourteen years of age, he may nominate such guardian ad litem; in all other cases the nomination may be made by the next of kin of said defendant, or any other relative or friend, whom said judge or commissioner may deem a proper person to make such nomination, and if said judge or commissioner approve the nomination so made, upon the filing of the written consent of the person proposed as guardian ad litem, he shall make such appointment. If such officer shall not approve of such nomination, he shall appoint some other suitable person as such guardian ad litem. The person so appointed shall not be liable for the costs of such suit, unless specifically charged by order of the court for some personal misconduct in such cause. If no such nomination is made within twenty days after the service of process or declaration, if the suit be commenced by declaration, the plaintiff may obtain an order from the court in which the proceedings are pending, appointing some suitable person to act as guardian ad litem for such person.

Insanity pending action.

SEC. 31. If, during the pendency of any action, either party shall become insane, the action may be prosecuted or defended by his guardian, in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a next friend or guardian to prosecute or defend the suit as the case may require.

Survival of Actions.

What actions survive.

SEC. 32. In addition to the actions which survive by the common law the following shall also survive, that is to say, actions of replevin, actions for the conversion of property, for deceit, for assault and battery, for false imprisonment, for negligent injuries to persons, for damages done to real and personal estate, and actions to recover real estate, or any

interest therein, where persons have been induced to part with the same through fraudulent representations and deceit.

SEC. 33. In all actions at law or in equity, where the cause of action does not survive, if one or more of the plaintiffs or defendants shall die, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

Abatement
as to one or
more parties.

SEC. 34. Where the cause of action at law or in equity survives, if a sole plaintiff or defendant dies, the action shall not abate, but upon a proper suggestion of the death of such party upon the record the executor or administrator of such deceased plaintiff or defendant, shall be admitted to prosecute or defend said action.

Executor, etc.,
admitted.

SEC. 35. When there are several plaintiffs or defendants in any action, the cause of which survives, and any of them shall die before final judgment or decree, the executor or administrator of such deceased plaintiff or defendant, shall be admitted to prosecute or defend, together with the surviving plaintiff, or defendant, as the case may be.

In case of
several
plaintiffs or
defendants.

SEC. 36. If all the plaintiffs or all the defendants shall die before final judgment or decree, such action shall be prosecuted or defended jointly by the executors, or administrators of such deceased plaintiffs or defendants.

Death of all
plaintiffs or
defendants.

SEC. 37. If the executor or administrator does not voluntarily appear on or before the first day of the next term, after the death of such party, the opposite party to said suit, or any co-plaintiff or co-defendant of said deceased party may have an order of course that the executor or administrator appear and take upon himself the prosecution or defense of the suit within thirty days after service of notice of such order.

Order for
appearance of
executor, etc.

SEC. 38. A copy of such order shall be served on the representative or other person or persons interested, as aforesaid, against whom the revivor is ordered if residents of the State; but if not residents of this State, then an order of publication of notice may be had from the proper court or officer, to revive in the same manner, and be published with the same effect, as is now provided in relation to absent, concealed or non-resident defendants in original bills; in the case of personal service of such order, the person so served shall be allowed thirty days after such service, to appear, answer, or disclaim.

Service
of order.

SEC. 39. If they shall not, in the case of personal service, within that time, or in case of publication, within the time prescribed by the order of publication, appear and answer, or disclaim, the court, upon due proof of the service of such order or publication of notice of the same, may cause their appearance to be entered; and in such case the answer of the deceased party shall be deemed the answer of such representatives, or other person or persons as aforesaid; and after such order of appearance, the same proceedings may be had and with the like effect as to absent or non-resident representatives, and other person or persons aforesaid, so brought in on

Time allowed
for appear-
ance.

Entry of
appearance.

Subsequent
proceedings.

publication of notice, as is now provided as to representatives of a deceased party brought in on personal service of an order of revivor.

Entry of default.

SEC. 40. If the executor or administrator shall not appear within the time limited by such order, his default shall be entered, and such judgment or decree shall be rendered against him in his representative capacity, as may be proper in the case.

Procedure against survivor.

SEC. 41. In cases where the action is brought to recover upon a several, or joint and several liability, and one of the parties so liable dies, the action may proceed at the option of the plaintiff against the surviving party, or parties, without bringing in the executor or administrator of the deceased.

Appearance of heir of plaintiff.

SEC. 42. In all real and mixed actions, if the plaintiff shall die before final judgment, his heir, within such time as the court shall allow, may appear and prosecute the suit, in the same manner as if the action had been originally commenced by him, or the action may be prosecuted by the executor or administrator for the benefit of the heir, or of the creditors of the deceased.

Death of one of plaintiffs.

SEC. 43. If there are several plaintiffs in such action, and any of them shall die before final judgment, the heir, executor or administrator of the deceased party may be admitted on motion, to prosecute the suit, jointly with the survivors, in the same manner as if he had joined with them in commencing the suit.

When surviving plaintiffs may prosecute.

SEC. 44. If the interest of the deceased party passes to the surviving plaintiffs, or if there be no motion for the admission of another person as heir, executor or administrator, within the time allowed by the court for that purpose, the surviving plaintiffs may prosecute the suit for so much of the premises in question as may be claimed by them.

Prosecution against surviving defendants.

SEC. 45. When there are several defendants in any real or mixed action, and any of them shall die before final judgment, the action may be prosecuted against the surviving defendants, for so much of the premises as they shall hold or claim.

Partition of lands.

SEC. 46. The same proceedings as are prescribed in the preceding sections, in relation to real and mixed actions, shall be had in all petitions and actions for partition of lands, in case of the death of any of the parties, except as is provided in the two following sections.

Death of one of several plaintiffs.

SEC. 47. If upon the death of either of several plaintiffs in a suit for partition, the interest of the deceased party shall pass to the surviving plaintiffs, or to any person who shall be admitted to join them in the suit, it shall be prosecuted accordingly, in the manner before provided respecting real actions, but if the interest of the deceased party shall pass to any person who is not so admitted as a plaintiff, such person may, by order of the court, be made a defendant, and the same proceedings may be had against him, as would have been necessary to make him an original defendant.

SEC. 48. If upon the death of either of several defendants, the interest of the deceased party shall pass to the surviving defendants, the suit may proceed against them without any new process, but if the interest of the deceased party shall pass to any other person, such person may be made a defendant, by order of the court, in the manner prescribed in the preceding section. Death of one of several defendants.

SEC. 49. In all cases where the opposite party, or a co-plaintiff or co-defendant of the deceased party is entitled to have the executor or administrator of the deceased party brought into the action as a party thereto, if an executor or administrator is not otherwise appointed, such party may petition for the appointment of an administrator in like manner as creditors are entitled to do. Appointment of administrator.

SEC. 50. When the plaintiff in any cause at law or in equity shall die, and the cause of action as stated in the pleadings shall not survive, his representatives may, by filing an affidavit showing such death, and showing that the pleadings on file do not correctly set forth plaintiff's real cause of action, on motion in open court, accompanied by an amended declaration or bill of complaint, showing a cause of action which did survive, be made plaintiffs in the suit, and the same shall stand revived as in other cases. Death of plaintiff in cause not surviving.

SEC. 51. If a defendant shall die, and the cause of action as stated in the pleadings shall not survive, and the plaintiff shall neglect or refuse to procure an order for the revival of the suit, upon a like showing as required in the preceding section, the court may order the suit to stand revived, upon motion of a surviving defendant, against the representatives of the deceased defendant. Death of defendant in cause not surviving.

SEC. 52. In all actions of replevin, or in attachment, when the sole plaintiff shall die during the pendency of the suit, it shall be sufficient for the defendant or defendants, as the case may be, to notify the surety or sureties in the replevin or attachment bond, to appear and prosecute the suit, and if he or they shall fail so to do within such time as the court shall direct, then his or their appearance may be entered by the defendant or defendants, and thereupon the cause shall proceed to judgment and execution, in like manner, and with like effect, as though the same had been originally commenced in the name of such surety or sureties. Death of sole plaintiff in replevin or attachment.

CHAPTER XIII.

Commencement of Suits and Service of Process.

SECTION 1. It shall not be necessary to file any warrant of attorney to authorize any attorney to appear in any court, for either party to an action brought therein, except in cases where it shall be especially required by law; nor shall any entry of any warrant of attorney in any record or other proceeding be necessary; but the plaintiff in his declaration, and Warrant of attorney not necessary, unless specially required.

	the defendant in his plea, shall state the name of the attorney or attorneys by whom they respectively appear.
Style of process.	<p>SEC. 2. The style of all process from courts of record at law and in chancery in this State shall be "In the name of the people of the State of Michigan," and such process shall be tested in the name of the chief justice, or presiding justice or judge, or one of the judges of the court from which the same shall issue, be sealed with the seal of the court, and signed by the clerk thereof, and, before the delivery thereof to any officer to be executed, shall be subscribed or indorsed with the name of the attorney for the plaintiff and the officer by whom the same shall be issued: <i>Provided</i>, that in case of vacancy in the office of chief justice, or presiding justice, or judge of the court from which such process issues, the same may be tested in the name of the chief justice, or one of the associate justices of the supreme court of the State of Michigan.</p>
Teste.	
Sealed.	
Indorsed.	
Proviso, vacancy in office of judge.	
Original writs.	<p>SEC. 3. All original writs in personal actions shall be a summons or a <i>capias ad respondendum</i> according to such form as shall be fixed by the general rule of court. Said writs may be issued in vacation or term time and shall be made returnable according to the general rule of court.</p>
Issue and return.	

Action—How Commenced.

How actions commenced. **SEC. 4.** All actions at law in any court of record, except *mandamus*, *quo warranto*, and *certiorari*, may be commenced either,

1. By original writ; or
2. By filing in the office of one of the clerks of the court, a declaration upon which is indorsed a notice in substantially the following form:

To defendant:

You are hereby notified that a suit has been commenced against you as defendant by, as plaintiff, and that the within is a true copy of plaintiff's declaration in said cause, and that if you desire to defend the same, you are required to plead thereto within fifteen days after service upon you of a copy of said declaration.

Dated

.....
Attorney for plaintiff.

And either of said methods may be used in any case, notwithstanding the provisions of any general, local or special act, or city or village charter to the contrary. If such action shall be commenced by original writ, plaintiff shall file his declaration in the office of the clerk within fifteen days after issuance of such writ.

How chancery suits commenced. **SEC. 5.** Suits in chancery shall be commenced by filing bills of complaint in accordance with the rules of court, and upon the filing of such bill the plaintiff shall be entitled to a chancery summons and other process when ordered by compe-

tent authority. The designation "chancery subpoena" so far as it applies to process for appearance other than as witnesses, is hereby abolished.

Designation
"chancery
subpoena"
abolished.

SEC. 6. In all chancery cases, and in suits at law when commenced by original writ, plaintiff may cause to be served with the process, a true copy of the bill of complaint or declaration in said cause and the defendant therein shall be required to plead or answer within fifteen days after such service. If the plaintiff shall not serve a copy of his bill of complaint or declaration with the process, the defendant shall appear within fifteen days after service of process, after which, copy of the bill of complaint or declaration shall be served upon defendant, or his attorney, within fifteen days: *Provided*, That where service of process against corporations is made upon the Commissioner of Insurance or Secretary of State, the defendant shall not be required to plead or answer thereto until thirty days after the mailing of the copy of such process to such defendant by said Commissioner of Insurance or Secretary of State.

Service of bill
or declaration
with process.

Appearance.

Proviso,
service on
insurance
commissioner,
etc.

SEC. 7. Actions of ejectment, and replevin, actions begun by attachment, and all special actions and proceedings, shall be commenced, and process therein be served, and pleadings and other proceedings had as hereinafter provided in the chapters relating to such actions and proceedings. Except as provided in such chapters, the general provisions in this act contained shall, so far as applicable, apply to such actions and proceedings.

Actions of
ejectment,
replevin,
attachment
and special
proceedings.

Of Security for Costs.

SEC. 8. On motion of the defendant, all plaintiffs who are non-residents of the State of Michigan, shall be, and all other plaintiffs, when it shall appear reasonable and proper to the court, may be required to furnish sufficient surety or sureties, to be approved by the clerk of the court, and who shall justify in double the amount of security ordered, for all such costs as may be awarded to the defendant, and such sureties shall be liable for all costs awarded either in the court of original jurisdiction, or in any appellate court: *Provided*, All such motions shall be made within fifteen days after service of the declaration or bill of complaint, unless such motion is based on a change in plaintiff's financial condition since the commencement of suit: *Provided further*, That in case any plaintiff except a non-resident of the State, shall show the court that he is unable to comply with such order, if the court shall be satisfied that the declaration in said cause states a meritorious cause of action, and that the suit is prosecuted in good faith, the plaintiff shall be allowed to proceed in such action without giving security for costs.

Security for
costs, by
whom given.

Sureties liable.

Proviso,
when motion
to be made.

Further
proviso,
when not to
give security.

SEC. 9. A copy of the bond or other undertaking, by which such security is given, shall be forthwith served upon the defendant or his attorney.

Service of
copy of bond.

New security,
when may
be required.

SEC. 10. If any plaintiff, or any surety for costs, shall remove out of the State, or if any such surety be deemed by the court insufficient, such court may require the plaintiff to give new or additional security to the satisfaction of the court; and every person becoming such additional surety, shall be liable for all costs from the commencement of suit, in like manner as if he had been the original surety.

Liability
of surety.

Of Capias ad Respondendum.

Commence-
ment by
capias.

SEC. 11. Personal actions arising upon contracts, express or implied, may be commenced by capias ad respondendum, only to recover damages for any breach of promise to marry where fraud is alleged, or for moneys collected by any public officer, or for any misconduct, or neglect in office, or in any professional employment, or in case of fraud or breach of trust, when the plaintiff shall file a declaration supported by the affidavit of himself, or any other person having knowledge of the facts, stating that the plaintiff has a claim for damages against the defendant for the cause of action stated in such declaration and upon which he believes that the plaintiff is entitled to recover a certain sum, being more than one hundred dollars.

Claims
for damages.

SEC. 12. Personal actions may be commenced by capias ad respondendum in cases of claims for damages, other than those arising upon contract, express or implied, in like manner as stated in the preceding section, where an order for bail shall be endorsed on the writ, by a judge of the court from which the writ issues, or a circuit court commissioner, directing the amount in which bail is to be taken. The court may increase or diminish the amount of bail upon proper showing.

Order for
bail.

SEC. 13. Such order shall be made only upon the presentation of a declaration supported by the affidavit of the plaintiff, or some other person having knowledge of the facts, and which declaration with the supporting affidavits, shall be filed, and copies thereof served with the writ.

How served.

SEC. 14. Writs of capias ad respondendum shall be served by the sheriff, or other officer, by arresting the defendant, and keeping him in his custody until discharged according to law, and serving a copy of the writ and the declaration and supporting affidavits upon which said writ is founded, upon the defendant.

Discharge
from arrest.

SEC. 15. Every defendant arrested upon a capias ad respondendum shall be entitled to be discharged from such arrest upon executing to the officer making the same, with the addition of his name of office, a bond, in a penalty equal to the amount specified in the order for bail, or in double the amount specified in the affidavit attached to the writ, as the case may be, with two sufficient sureties, conditioned that such defendant will appear in the action commenced by such writ, by putting in special bail within fifteen days after service of said writ upon him, and by perfecting such bail, if required, according to the rules and practice of the court.

SEC. 16. The officer taking such bail, shall give to the sure- Ball piece.
ties a bail piece in substance as follows:

..... county, ss. On this day of
one thousand nine hundred and A. B. is bailed by
C. D. and E. F. of the county of upon a capias
ad respondendum, returnable in the court, on the
..... day of at the suit of in a
plea of (as the case may be);
which bail-piece shall be signed by such officer.

SEC. 17. When the name of any defendant shall not be Fictitious
known to the plaintiff the writ may be issued against him by name.
a fictitious name, and if duly served, it shall not be abated for
that cause, but may be amended on such terms as the court
shall think reasonable.

SEC. 18. If a defendant arrested on process on which he is Return that
required to be held to bail, shall be committed to prison for defendant is
the want of such bail, the sheriff or other officer making the imprisoned.
arrest shall specially return upon such process, the fact that
the defendant is imprisoned for want of bail.

SEC. 19. If the defendant in any action commenced by Service on
capias ad respondendum, shall be in custody, such writ may defendant in
be served upon him in like manner, and with the same effect, custody.
as if he were at large.

SEC. 20. In this act wherever the term "process" is used, "Process"
it shall be deemed to include declarations, in suits commenced includes
by declaration, wherever the same would be applicable. declarations.

SEC. 21. Writs of summons at law and in chancery, shall Summons,
be served by showing the original writ to the defendant, and how served.
delivering to him a copy thereof; and on the return of the
writ personally served, the defendant shall be considered in
court, and may be proceeded against accordingly.

Who May Serve Process.

SEC. 22. All civil process at law, or in equity, issued from By whom may
any court of record, except process requiring the arrest of be served.
any person, or the seizure of property, may be served by any
person of suitable age and discretion, and proof of service
shall be made by the affidavit of the person making such ser- Return.
vice, except when such service is made by an officer of the
court authorized to serve process, when his certificate of ser-
vice shall be sufficient proof thereof.

SEC. 23. The judge of any circuit court of this State may Appointment
in any suit or proceeding at law or in chancery commenced of person
or pending therein, on the application of any party thereto for service.
by petition signed by such party or by his attorney or agent,
duly verified, showing the facts, appoint some disinterested
person to serve any process or other papers, original or final,
or to do any act therein which the sheriff by law might do in
said cause, in cases where the sheriff and coroners of the
county are parties, or interested or incapacitated to act; such
appointment shall be made in writing under the hand of the
judge, and filed in the cause; and the person so appointed

Fees.	shall have the same power conferred upon him, and proceed in the same manner prescribed for the sheriff in the performance of like duties; the fees payable to such person shall be the same as those payable to sheriffs by virtue of the provisions of law in that behalf for like services. Such judge may, in his discretion, require the person so appointed, before acting under said appointment, to give a bond to the people of this State in such penal sum, and with such surety or sureties as such judge may approve, conditioned for the faithful performance and execution by such person of his duties in such case, without fraud, deceit or oppression, and for the payment of all moneys that may come into his hands by virtue of such appointment.
Bond.	
Deemed to be coroner.	SEC. 24. The person so designated and receiving such process or other papers, original or final, shall, in respect to the same, be deemed a coroner of the county, and shall be liable in all respects to all the provisions of law respecting sheriffs, so far as the same may be applicable.
First day of week.	SEC. 25. Except as otherwise provided by law, no person shall serve or execute any civil process, from midnight preceding, to midnight following the first day of the week, nor shall any process be served on any elector entitled to vote at any election during the day on which said election is held.
Service on elector.	SEC. 26. Upon sufficient cause being shown by affidavit, to the satisfaction of a judge of any circuit, such judge may make any restraining order, or authorize the issuance of any writ on Sunday, or any legal holiday, or election day, and may authorize the service or execution thereof on any such day.
Service on Sunday, etc.	

Where Process May be Served.

Service anywhere within state.	SEC. 27. All civil process issued from any court of record may be served anywhere within the State where the party upon whom service is to be made may be found, in the following cases:
	1. When the process is issued out of a court in chancery;
	2. When the process is issued out of a court at law, when the suit is brought in the county where the defendant, or one of the defendants if there be more than one, resides;
	3. In ejectment cases and in all other cases where suit is required by law to be brought in the county where the subject matter of the suit is located or where the fact happened out of which the cause of action arose;
	4. In any suit brought upon any bond required by law to be filed in any probate court.
Service in county.	When a personal transitory action at law is commenced in the county where the plaintiff resides, against a defendant or defendants residing without the county, service of process must be had in the county where the suit is commenced. If such service is had upon one defendant within such county, the remainder of the defendants may be served anywhere in

the State: *Provided*, That nothing in this section contained shall be construed to abrogate or repeal any provisions of section seventeen of act number eighty-two of the Public Acts of eighteen hundred seventy-three, the same being section seven thousand two hundred eighty-two of the Compiled Laws of eighteen hundred ninety-seven, relating to suits by receivers of mutual fire insurance companies for assessments levied by them.

Proviso,
certain act
not repealed.

SEC. 28. Civil process issued from any of the courts of this State, when the same may be served by law anywhere in the State, may be served upon any of the waters of the great lakes lying within the State. Any civil process which is required by law to be served within the boundaries of any county within this State, may also be served upon any of the waters of such lakes, lying adjoining the county from which such process issued, and within the territory included by an extension of the boundary lines of such county, to the boundary line of the State: *Provided*, That in any county where the boundary lines thereof by reason of irregularity, are not capable of extension, any such process may be served on such waters at any point within ten miles of the shore line of said county.

Service upon
great lakes.

Proviso.

How Service of Process May be Made.

SEC. 29. Process issued from any court of record against a corporation, partnership association or unincorporated voluntary association, may be served upon any officer, director, trustee or agent thereof, or by leaving same during regular office hours at the office of such corporation, partnership association or unincorporated voluntary association, with any person in charge thereof. Except as otherwise provided in this act, all general or special laws relating to the service of process upon corporations are hereby repealed.

Service upon
corporation,
etc.

SEC. 30. Whenever it shall become necessary to serve any process, notice or writing upon any company or corporation, owning or operating any steam, electric or street railway, in the State of Michigan, it shall be sufficient to serve the same upon any station agent, or ticket agent at any station or depot along the line, or at the end of the road of such company, or upon any conductor in charge of any train or car of such company along the line of, or at the end of the road of such company, and such service shall be deemed as good and effectual as if made on the officers, directors or other agents of such company: *Provided*, That the modes of service herein provided for, shall be in addition to those provided for in the preceding section: *Provided further*, That service shall not be made upon conductors of street cars in cities where the home office of the corporation is located.

Service upon
railway
company.

Proviso,
additional
modes.
Further
proviso,
when not
upon con-
ductors.

SEC. 31. In all cases where suit is brought against a foreign corporation, process may be served upon any officer or agent of such corporation within this State, and any person representing such corporation in any capacity, shall be deemed an

Service upon
foreign cor-
poration.

agent within the meaning of this section. If such corporation has a legally designated agent or attorney in this State, appointed in pursuance of statute for that purpose, service of process may also be made upon such agent or attorney. The provisions of this section shall not apply to the cases enumerated in section thirty-three of this chapter.

Service upon
secretary
of state.

Fee.

Service upon
insurance
companies,
etc.

SEC. 32. In all cases of foreign corporations, which have paid a franchise fee to the Secretary of State, and been admitted by him to do business in this State, in addition to the other methods of service of process herein provided, service of process may also be made upon the Secretary of State. There shall be paid to the Secretary of State at the time of such service a fee of three dollars, which sum may be taxed as costs to the plaintiff, in case he prevails in the proceedings.

SEC. 33. In all cases of domestic or foreign insurance companies, fraternal, co-operative and mutual beneficiary societies, orders or associations, and in all other cases where it is required by law that any company, society, order or association, shall appoint in writing the Commissioner of Insurance, the Secretary of State, or any other officer of this State, as their agent or attorney, upon whom all legal process in any action or proceeding may be served, if such appointment shall have been made, service of process shall be made upon such officer. In cases against fire and marine insurance companies service of process may be made in the manner herein provided or in any other manner permitted by law.

Service in
duplicate.

SEC. 34. In all cases where process is served upon the Commissioner of Insurance, Secretary of State, or any other State officer as such agent, such service shall be made in duplicate upon such officer, or his deputy, or in their absence, upon the person in charge of his office; and one of the duplicate copies so served shall forthwith be forwarded by registered mail, postage prepaid, and directed to the secretary or corresponding officer of the defendant.

Service upon
municipal
corporations,
boards, etc.

SEC. 35. In suits or proceedings against municipal and public corporations, and certain unincorporated boards, service of process may be made as follows:

1. Against counties, upon the chairman of the board of supervisors or the county clerk;
2. Against the superintendents of the poor of counties, upon any of the said superintendents;
3. Against cities, upon the mayor, city clerk or city attorney;
4. Against villages, on the president or clerk of the village, or in their absence upon any of the trustees thereof;
5. Against townships, upon the supervisor or township clerk;
6. Against school districts, upon the president of the board of education, director, moderator or treasurer of such district;
7. Against any corporate body or unincorporated board, now or hereafter having charge or control of any State in-

stitution, where the right to bring such suit or proceeding is conferred by law, upon the president, secretary or any member of the governing body thereof;

8. Notices, writs, or other process in judicial proceedings may be served upon any common council, board, commission, or other public body organized or existing under any law of this State, when by statute no other method of service is specially provided, by delivering the same or a certified or verified copy thereof to the president or chairman of such council, board, commission or body, or to the clerk or secretary thereof, and it shall be the duty of the officer upon whom such service shall be made, at its next meeting, to inform such common council, board, commission, or other public body of such service, and it shall not be necessary to serve notices, writs, or other process upon the individual members of such common council, board, commission, or other public body, and such council, board, commission, or other public body may appear and answer or plead in such proceedings in such manner as it may direct.

SEC. 36. When it may be necessary to institute suits against any corporation, which may have ceased to do business, or to keep up its organization by the appointment of officers or otherwise, or the term of whose existence may have expired by limitation, it shall be competent to serve any writ, declaration or other process in such suit, on either of the persons who may have been the last presiding officer, president, cashier, secretary or treasurer thereof; and such service shall be as effectual to all intents and purposes as if made on such corporation.

Service upon corporations not doing business, etc.

SEC. 37. Any citation, order or process required by law to be served on an inmate of the hospitals or homes for the insane or feeble minded, or epileptic, or any other State hospital or asylum, shall be served only by the medical superintendent in charge thereof or by some one designated by him. Return thereof to the court from which the same issued shall be made by the person making such service, and such service and return shall have the same force and effect as if it had been made by the sheriff of the county.

Service upon inmates of hospitals for insane, etc.

Return.

SEC. 38. When any process or order, issued by any court of record, or any declaration or other paper, shall be delivered to any sheriff, under-sheriff or deputy to serve, it shall be the duty of such officer to serve the same with all convenient speed, and to return the same with his certificate endorsed thereon, of the time and manner of such service, either to the office of the clerk of the court in which such suit or proceeding may be pending, or to the attorney whose name shall be endorsed on such process, order, declaration or paper; and in any action where an under-sheriff or deputy sheriff is a party, any process may be served on such under-sheriff or deputy sheriff, by the sheriff in person, or by any under-sheriff or deputy sheriff who is not a party to such action. When the sheriff shall be a party or interested in any suit, any coroner

Return of process, etc.

Service upon under or deputy sheriff.

Service upon sheriff.

within his county, may serve and execute any process, order or decree, or any other paper in said cause, and shall have the same powers, and be subject to the same liabilities as sheriffs in similar cases.

Service at
expiration of
term of office

SEC. 39. Sheriffs, undersheriffs and deputy-sheriffs, may execute all such original or final process as shall be in their hands at the expiration of the term for which such sheriffs were elected, the execution of which shall have been begun by him, and shall make [make] due returns thereof in their own name; and in case of a vacancy in the office of sheriff, every deputy in office under him, may execute any writ or process in his hands, or in the hands of such sheriff, at the time such vacancy happened, and shall have the same authority, and be under the same obligation to serve and execute and return the same, as if such sheriff had continued in office.

Exemption
from arrest.

SEC. 40. No officer of the senate or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest on civil process.

Service upon
prisoner.

SEC. 41. Process may be served upon any person confined in any jail or prison in this State, whether such confinement be under civil or criminal process, by delivering a true copy of such process to the sheriff, warden or other officer in charge of such jail or prison, who shall forthwith deliver the same to such prisoner.

Exemption
of female.

SEC. 42. No female shall be imprisoned on any process in any civil action.

Exemptions from Arrest.

Exemption
from arrest
in civil suit.

SEC. 43. Any person duly and in good faith subpoenaed as a witness in any suit, or proceeding, and any party thereto, and any attorney engaged therein, shall be exonerated from arrest in any civil suit, while going to the place where he shall be required to attend, while in attendance and while returning therefrom; and in all cases where such attendance is without the county of the residence of such witness, party or attorney, he shall be exempt from the service of any civil process, in any suit commenced in the county where he is so in attendance. All other officers of the several courts of record shall be liable to arrest, and may be held to bail in the same manner as other persons, except while in attendance upon an actual sitting of the court of which they are officers, or while going to, or returning from such sitting. The court or officer before whom any person shall have been subpoenaed in good faith to attend as a witness, and every justice of the supreme court, circuit judge and circuit court commissioner, shall have authority to discharge any person arrested contrary to the provisions of this section.

Arrest void;
contempt.

SEC. 44. Every arrest made contrary to the foregoing provisions, shall be absolutely void, and shall be deemed a contempt of the court issuing the subpoena; and every person making or procuring such arrest, shall be responsible to the

person arrested in double the amount of damages which shall be found by the jury, and shall also be liable to an action at the suit of any injured party for the loss, hindrance and damage sustained by him in consequence of such arrest.

Liability
of person
causing.

SEC. 45. But no sheriff, or other officer or person shall be so liable, unless the person claiming an exemption from arrest shall, if required by such sheriff or officer, make an affidavit stating:

Affidavit
of person
arrested.

1. That he has been legally subpoenaed as a witness to attend before some court, officer, auditors, referees, commissioners or notary public, specifying such court, officer, auditors, referees, commissioners, or notary public, the place of attendance and the cause in which he shall have been subpoenaed, and that he has not been subpoenaed by his own procurement with intent to avoid the service of any process; or

2. That he is an attorney in, or party to a suit, the trial of which is then pending, and that he is going to, or in actual attendance upon, or returning from the court in which said trial is then pending, and that his attendance upon said court is necessary to the trial of said cause; or

3. That he is an officer of a court of record, actually and in good faith, going to, attending upon or returning from an actual sitting of the court in which he is such officer.

Of Substituted Service.

SEC. 46. Upon, or at any time after, the filing of a bill, the circuit judge, or a circuit court commissioner, shall make an order for the appearance of the defendant, within three months from the date of the order, upon proof by affidavit of any of the following facts:

Order for
appearance.

Affidavit
of facts.

1. That the defendant resides out of the State;

2. That the defendant is a resident of this State, and that process for his appearance has been duly issued, and that the same could not be served by reason of his absence from, or concealment within this State, or by reason of his continued absence from his place of residence; or

3. That it cannot be ascertained in what state or country the defendant resides.

SEC. 47. Such order shall be published within twenty days after it shall have been made, in some newspaper printed in the county, or in such other paper as the court may direct, once in each week for six weeks in succession; but such publication shall not be necessary in any case in which a copy of such order shall have been served on such absent, concealed or non-resident defendant, personally, at least twenty days before the time prescribed for the appearance of such defendant, and due proof of such publication or service shall be made.

Publication
of order.

SEC. 48. The court may, if necessary, by further order, extend the time for the appearance of such defendant; and in that case, shall direct the publication of such further order for so long a time as it shall think proper.

Extension
of time for
appearance.

Copy of order
to be mailed.

SEC. 49. In all cases a copy of such order shall be mailed to said defendant at his last known postoffice address by registered mail, and a return receipt demanded, and proof by affidavit shall be required of such mailing, and whether or not a return receipt was received, and if one was received, it shall be attached to said affidavit.

CHAPTER XIV.

Of Pleadings at Law and in Equity.

Where to
be filed.

SECTION 1. All pleadings and proceedings in actions at law or in chancery, shall be filed in the office of the clerk of the court in which the cause is pending, unless otherwise directed by rule or order of the court, and within such time, and under such regulation as shall be by statute or general rule directed.

Forms of
declarations.

SEC. 2. In the actions which are in this act retained, the forms of declaration now in common use may be employed; but no declaration shall be deemed insufficient which shall contain such information as shall reasonably inform the defendant of the nature of the case he is called upon to defend.

Sufficiency.

Entitling.

SEC. 3. It shall not be necessary to entitle any declaration or other pleading, of any term of the court, or of any day in term or vacation, nor shall it be necessary to mention the name of the state, in the statement of the venue in any case.

Venue.

Demurrers, Etc., Abolished.

Demurrers
and certain
pleas
abolished.

Questions,
how raised.

Amendment
of pleadings.

SEC. 4. Demurrers, pleas in abatement, and pleas to the jurisdiction, are abolished. All questions heretofore raised by such plea or demurrer, shall hereafter be raised by motion to dismiss, or in the answer or notice attached to the plea; and in case such questions are raised by answer, or by notice attached to the plea, the same may be brought up for determination by the court, in advance of the trial of said cause, upon four days' notice by either party. The plaintiff shall at any time, either before or after the hearing of the questions so raised, be entitled to amend his pleadings, so as to meet the objections raised thereto, upon such terms as the court may deem proper.

Service of
copies of
pleadings, etc.

SEC. 5. When the defendant shall have appeared, and notice thereof shall have been given, as provided in this act, it shall be the duty of the plaintiff or defendant to serve upon the opposite party, or his attorney, copies of the pleadings and proceedings at any time thereafter filed in the cause.

Waiver of
answer on
oath.

SEC. 6. When a bill shall be filed in chancery, other than for discovery only, the plaintiff may waive the answer being made on the oath of the defendant, and in such cases the answer may be made without oath, and shall have no other or greater force as evidence than the bill.

Averment of
incorporation.

SEC. 7. In actions by or against any corporation, foreign or domestic, it shall not be necessary to recite the act or acts

of incorporation, or the proceedings by which such corporation was created, or to set forth the substance thereof; but it shall be sufficient to aver that such plaintiff or defendant is a corporation organized and existing, under, and by virtue of the laws of the state, or country, naming it, where such plaintiff or defendant was incorporated.

SEC. 8. In suits brought by or against any corporation, foreign or domestic, it shall not be necessary to prove on the trial of the cause, the existence of such corporation, unless the defendant shall have denied the same under oath in his plea or answer. Existence of corporation.

SEC. 9. The plaintiff in all actions on bills of exchange or promissory notes, may declare upon the money counts alone, and any such bill or note may be given in evidence under the money counts, in all cases where a copy of the bill or note shall have been served with the declaration; and the return or proof of service of such copy upon the defendant or defendants, shall be prima facie evidence of such service. Money counts.

SEC. 10. No special plea in bar shall be pleaded in any civil action hereafter to be commenced; but all matters of defense to any such action, may be given in evidence under the general issue. Special pleas in bar abolished.

SEC. 11. In all civil actions hereafter to be commenced, the general issue shall consist of a demand by the defendant, of a trial of the matters set forth in the plaintiff's declaration. General issue.

SEC. 12. To entitle a defendant to avail himself of any matter of defense, which, according to the practice as it has heretofore existed, was required to be pleaded specially, or of which a special notice was required to be given under the general issue or other general plea, such defendant shall annex to his plea of the general issue a notice to the plaintiff, briefly stating the precise nature of such matter of defense. Notice of special matter of defense.

SEC. 13. In any action based upon the provisions of any statute, or city or village ordinance, it shall be sufficient for the plaintiff without setting forth the special matter, to aver that said action arose by virtue of the provisions of such statute or ordinance, by reference to the same. Pleading statutes or ordinances.

Replications Abolished.

SEC. 14. Replications in equity causes are abolished, and such causes shall be deemed to be at issue, upon the filing of the answer to the bill of complaint, or upon the filing of the answer of the plaintiff to the cross-bill of the defendant. Replications abolished.

SEC. 15. Supplemental pleadings, showing matters arising since the original pleadings were filed, may be filed by either party by leave of court. Supplemental pleadings.

CHAPTER XV.

Of Set-off and Recoupment.

What
demands may
be set off.

SECTION 1. In the following cases and under the following circumstances a defendant may set off demands which he has against the plaintiff:

1. It must be a demand arising upon judgment or decree, or upon contract express or implied, whether such demand be liquidated or not, and whether such contract be written or unwritten, sealed or without seal; and if it be founded upon a bond or other contract having a penalty, the sum equitably due, by virtue of its conditions only, shall be set off;

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee or owner of the demand;

3. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant;

4. It can be allowed only in actions found upon demands which could themselves be the subject of set-off according to law;

Proviso,
actions on
note, etc.

5. If there be several defendants, the demand set-off must be due to all of them jointly, except where other provision is expressly made by law: *Provided*, That in actions upon a note or other contract for the payment of money against several defendants, any one of whom is principal, and the other sureties therein, any claim upon contract in favor of the principal defendant, and against the plaintiff, or any former holder of the note who transferred the same after due or other contract, may be allowed as a set-off by the principal or any other defendant;

6. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff having no real interest in the contract upon which the suit is founded; in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified;

7. If the action be founded upon a contract other than a negotiable promissory note, or bill of exchange which has been assigned by the plaintiff, a demand existing against such plaintiff, or any assignee of such contract at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such plaintiff or such assignee while the contract belonged to him;

8. If the action be upon a negotiable promissory note, or bill of exchange, which has been assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been

set off against the assignor while the note or bill belonged to him;

9. If the plaintiff be a trustee for another, or if the suit be in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

SEC. 2. Whenever the holder of any bill of exchange, or promissory note, instead of bringing separate suits against the drawers, makers, guarantors of the payment thereof, indorsers and acceptors of such bill or note, includes all or any of the said parties to the bill, or note, in one action, any person or persons sued, shall be entitled to set-off his or their demand against the plaintiff, and if the whole amount of the demands set-off by any, or all of the defendants, shall be equal to, or shall exceed the amount of the plaintiff's demand, as proved on the trial, judgment shall pass in favor of the defendants generally; but if a balance shall be found in favor of the plaintiff, the verdict or judgment shall show the amount allowed to each defendant as a set-off against the plaintiff's demand.

When holder
sues all
parties to bill,
etc.

Judgment.

SEC. 3. To entitle a defendant to a set-off or recoupment, he must annex a notice thereof to his plea of the general issue, with a bill of particulars of such set-off or recoupment in all cases where such bill might be demanded.

Notice.

SEC. 4. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Judgment.

SEC. 5. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff, when the contract, which was the subject of the suit, shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

Judgment for
defendant.

SEC. 6. In suits brought by executors and administrators, demands existing against their testators or interests, and belonging to the defendant at the time of their death, may be set-off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

Suits by
executors, etc.

SEC. 7. When a set-off is established in a suit brought by executors or administrators and a balance found due the defendant, the judgment shall be against them in their representative character, and shall be evidence of a debt established, to be paid in the course of administration.

Judgment
against
executors, etc.

SEC. 8. In any action hereafter commenced in this State when the defendant has given notice of a set-off or recoupment, the plaintiff shall not be allowed to discontinue his suit

Plaintiff not to
discontinue,
etc.

Google

Set-offs in equity.	or submit to a non-suit without the consent of the defendant. SEC. 9. In suits in equity for the payment or recovery of money, set-offs shall be allowed in the same manner, and with the like effect, as in actions at law.
Recoupment; judgment for defendant.	SEC. 10. In any action, in any court, if the defendant shall claim damages by way of recoupment, by plea or otherwise, in pursuance of the rules and practices of such court, and on the trial of the issue formed, if the court or jury trying the same shall find such defendant entitled to an amount of damages, whether liquidated or not, greater than the amount of the demand of the plaintiff, the court shall give judgment according to the true right thereof for the defendant, for the amount of such excess so found and costs, and issue execution therefor against the plaintiff, as in cases of judgment and execution on plea or notice of off-sets.

CHAPTER XVI.

Of the Statute of Amendments.

Amendment of process, pleadings, etc.	SECTION 1. The court in which any action or proceeding shall be pending, shall have power to amend any process, pleading or proceeding in such action or proceeding, either in form or substance, for the furtherance of justice, on such terms as shall be just, at any time before judgment or decree rendered therein. The court at every stage of the action or proceeding shall disregard any error or defect in the proceedings, which do not affect the substantial rights of the parties.
Error or defect.	SEC. 2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended.
Opportunity to answer.	SEC. 3. After judgment rendered in any cause, any defect or imperfections in matter of form, contained in the record, pleadings, process, entries, returns, or other proceedings, may be rectified and amended by the court, in affirmance of the judgment, so that such judgment shall not be reversed or annulled; and any variation in the record, from any process, pleading or proceeding had in such cause, shall be reformed and amended according to such original process, pleading or proceeding.
Amendment after judgment.	SEC. 4. All returns made by any sheriff or other officer, or by any court or subordinate tribunal, to any court, may be amended in matter of form by the court to which such returns shall be made, in their discretion, as well before as after judgment.
Amendment of returns.	SEC. 5. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall any judgment upon confession, or default, be reversed, impaired, or in any way affected, by reason of the following imperfec-
Judgment not stayed or reversed for certain imperfections, etc.	

tions, omissions, defects, matters or things, or any of them, in the pleadings, process, record or proceedings, namely:

1. For any default or defect in process; or for misconceiving any process, or awarding the same to a wrong officer; or for the want of any suggestion for awarding process, or for any insufficient suggestion;

2. For any imperfect or insufficient return of any sheriff or other officer, or that the name of such officer is not set to any return actually made by him;

3. For any variance between the original writ, bill, plaint and declaration, or between either of them;

4. For any mispleading, discontinuance, or discontinuance, insufficient pleading, or misjoining of issue;

5. For the want of any warrant of attorney by either party; except in cases of judgment by confession, where such warrant is expressly required by law;

6. For any party under twenty-one years of age, having appeared by attorney, if the verdict or judgment be for him;

7. For the want of any allegation or averment, on account of which a motion to dismiss could have been maintained;

8. For omitting any allegation or averment of any matter, without proving which the jury ought not to have given such verdict;

9. For any mistake in the name of any party or person, or in any sum of money; or in the description of any property; or in reciting or stating any day, month or year, when the correct name, time, sum or description shall have been once rightly alleged in any of the pleadings or proceedings;

10. For a mistake in the name of any juror or officer;

11. For the want of a right venue, if the cause was tried by a jury of the proper county;

12. For any informality in entering a judgment, or making up the record thereof; or in any continuance or other entry upon such record;

13. For any other default or negligence of any clerk or officer of the court, or of the parties, or their counselors or attorneys, by which neither party shall have been prejudiced.

SEC. 6. The omissions, imperfections, variances and defects in the preceding section of this chapter enumerated, and all others, of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties, or the trial, shall be supplied and amended by the court where the judgment shall be given, or by the court into which such judgment shall be removed by writ of error.

Omissions, defects, etc., to be amended by court.

SEC. 7. No process, pleading or record, shall be amended or impaired by the clerk or other officer of any court, or by any other person, without the order of such court, or of some other court of competent jurisdiction.

Process, etc., not to be amended without order of court, etc.

SEC. 8. The provisions of this chapter shall extend to all actions and proceedings in courts of law and equity.

Application.

Imperfection
in appeal, etc.

SEC. 9. No appeal shall be dismissed on account of any informality or imperfection in the bond, affidavit or other proceedings, for the taking of such appeal, if plaintiff shall either by amendment, or by furnishing a new bond, affidavit or other paper, supply the deficiency or defect.

When bond
deemed
sufficient.

SEC. 10. Whenever a bond is or shall be required by law to be given by any person, in order to entitle him to any right or privilege conferred by law, or to commence any proceeding, it shall not be necessary for such bond to conform in all respects to the form thereof prescribed by any statute, but the same shall be deemed sufficient if it conforms thereto substantially, and does not vary in any matter to the prejudice of the rights of the party to whom or for whose benefit such bond shall have been given.

Amendment
of bond.

SEC. 11. Whenever such bond has been heretofore, or shall hereafter be given, and shall be defective in any respect, the court, officer, or body who would be authorized to receive the same, or to entertain any proceedings in consequence of such bond, if the same had been perfect, may, on the application of all the obligors therein, amend the same in any respect, or may, on the application of the person required to give such bond, allow a new one to be substituted in the place thereof, bearing date at the time when such bond was required to be given, and such bond shall thereupon be deemed valid from the time of the execution of such defective bond. When application is made to amend, said court, officer, or body shall have power to amend such bond in any respect, and without regard to the particular amendment applied for, so as to make said defective bond such a one as might have been required when the latter was given. When a new bond is allowed, it shall be such in form, penalty, and other respects, as might have been demanded when the defective bond was given.

New bond.

CHAPTER XVII.

Of Evidence.

Testimony
in chancery,
how taken.

SECTION 1. In all chancery cases, the testimony shall be taken in open court as in suits at law, unless the court shall specially order a reference to a circuit court commissioner, or other person authorized by law to administer oaths, to take such testimony. This section shall not be construed to preclude the taking of depositions in the cases provided by law.

Officer to
take proofs.

SEC. 2. The officer to whom any such reference may be made, shall take such proofs as may be offered; and the bill shall not be considered evidence before such officer of any fact stated therein.

Examination
of plaintiff.

SEC. 3. Whenever the bill shall have been filed for the payment or satisfaction of any sum of money, the court may, in its discretion, direct that the plaintiff be examined by such officer, as to any payments that may have been made to him, or to any person for his use on account of the demand men-

tioned in the bill, and which ought to be credited on such demand, or he may be examined in open court.

SEC. 4. Such officer shall report the proofs and examinations had before him; and on the coming in of the report, or on proof and examination in open court, as the case may be, the court shall make such order thereupon as shall be just.

Report of proofs and examinations.

SEC. 5. In all chancery cases, the court shall rule upon all objections to the competency, relevancy or materiality of testimony, or evidence offered, the same as in suits at law; and in all cases where the court is of the opinion that any testimony offered is incompetent, irrelevant, or immaterial, the same shall be excluded from the record: *Provided, however,* That if the testimony so offered and excluded is brief, the court may in its discretion permit the same to be taken down by the stenographer separate and apart from the testimony received in the case; and in case of appeal, such excluded testimony may be returned to the appellate court under the certificate of the trial court: *Provided further,* That where such excluded testimony is not taken and returned to the supreme court on appeal, if upon the hearing of such appeal, the supreme court shall be of the opinion that any such testimony is competent and material, it may order the same to be taken by deposition, or under a reference, and returned to said court.

Objections to competency, etc., of testimony, etc.

Proviso, excluded testimony.

Further proviso, order for excluded testimony.

Of Depositions.

SEC. 6. The testimony of any witness may be taken by deposition *de bene esse*, in any civil cause or matter, begun or pending in any court of record, at law or in chancery, or before any probate court, or commissioners on claims appointed by any probate court, or arbitrators, referees, or circuit court commissioner, or justice of the peace, in the State of Michigan, or in any other civil proceeding, when the witness is or is about to go or resides out of the State of Michigan, or is about to go, or reside more than fifty miles from the place of trial, or beyond the jurisdiction of the court; or when the witness is sick, aged or infirm, or where there is reasonable cause for apprehension that his testimony can not be had at the trial of the cause, or where it is needed for use on hearing of motions, petitions, proceedings for injunctions, or upon any other interlocutory or other proceedings prior to final hearing of any cause; and in all cases where affidavits are permitted to be used in proceedings before the court; also when it is desired to take conditionally and perpetuate testimony in suits to be begun; and in any other case not above provided for when it shall appear to the court or judge thereof that the purposes of justice will be aided thereby. The deposition may be taken before any judge of any court of the United States, or of any state of the United States, or of any foreign country, or before any commissioner of a circuit court in Michigan, or of the United States, or of any state, or any commissioner for Michigan, or any consul, or consular

Testimony taken *de bene esse*.

Before whom taken.

Notice.

officer, justice of the peace, officer, or notary public, authorized by the laws of this State, or of any other state, or of the United States, or by the laws of any foreign country, to administer oaths, not being of counsel or attorney for either of the parties, nor interested in the event of the cause. The seal of such court or official, or a certificate of such authority, given under the seal of any court of record, shall be prima facie evidence of authority to act. Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition, to the opposite party or his attorney of record, which notice shall state the name of the witness or witnesses, and the time and place of taking his deposition, and the name of the official before whom the same will be taken, and in all cases in rem, attachment or replevin, the person having the agency or possession of the property at the time of seizure, shall be deemed the adverse party until a claim shall have been put in or appearance entered in the cause; and whenever, by reason of the absence from the jurisdiction of the party, or want of an opposite attorney of record, or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts within the jurisdiction where the suit is pending, shall think reasonable, and direct. Any person may be compelled to appear and depose as provided by this act, by the order or process of any court and to produce books and papers in the same manner as witnesses may be compelled to appear and testify in court.

Testimony,
how taken
under com-
mission.Interroga-
tories.

SEC. 7. In any case where the deposition of a witness can be taken upon notice, his deposition may instead be taken under commission, upon which section nine of this chapter shall be printed, and any circuit court commissioner in the State of Michigan, or the court in which such proceeding is begun or pending, or the judge, clerk or register thereof, or in any case pending before a justice of the peace, such justice shall upon affidavits showing reason therefor, issue a commission (upon which shall be printed section nine of this chapter) for the taking of the testimony of such witness before any person therein appointed as commissioner. Written interrogatories to be put to such witness by such commissioner, may be attached to the commission; if attached, a copy thereof shall be attached to the notice which shall in any case be given to the opposite party or his attorney, of the time and place of taking testimony under such commission. Cross and re-direct interrogatories, which it is desired the commissioner shall put to the witness, shall thereupon be promptly furnished to the respective parties and to such commissioner. Where default or order pro confesso has been entered in the cause, notices shall not be necessary.

Attendance
of witnesses.

SEC. 8. Courts of record of this State shall have the power to compel the attendance of witnesses and the giving of their testimony, and the production of books, papers and other evi-

dences, before commissioners or persons authorized to take testimony and also under commissions or letters rogatory, issued out of any court of any other state, or of the United States, or of any foreign government or country.

SEC. 9. Each witness shall be sworn or affirmed by the officer or person empowered to take such testimony, to tell the truth, the whole truth, and nothing but the truth, concerning the matter at issue in the cause. Every witness may be examined, cross-examined, and re-examined, orally, and also so examined in addition to written, direct or cross-interrogatories. Examinations may be adjourned from time to time. Testimony may be written or taken stenographically and transcribed under direction of the officer so taking the same and shall be signed by the witness and certified as correct by the official before whom it is taken, but signatures of witnesses may be waived in writing by agreement of parties. The deposition when taken shall be forthwith inclosed by the official before whom the same is taken, and indorsed with the title of the court and cause, and that the deposition was taken and sealed up by him, and how it is to be sent, and he shall sign the indorsement, and the same shall be transmitted by mail or otherwise, to the court in which the cause is pending, and in case such deposition is taken for use before commissioners on claims appointed by any probate court to such court, and then be opened by the court or clerk or register, and written notice thereof then given by mail or otherwise to the parties. Objections to notices of, or objections to the manner of taking the testimony, or of certifying or returning the deposition, shall be regarded as waived unless made in writing within ten days after knowledge or notice of the return thereof.

Oath of witness.

Examination.

Adjournments.
How testimony taken.

Return of deposition.

Notice of receipt.

Objections, when regarded as waived.

SEC. 10. To perpetuate testimony, any person who expects to be a party to a suit, which may thereafter be commenced in any court of record, may cause the testimony of any witness material to him in the prosecution or defense of such suit to be taken conditionally, and perpetuated, under a commission so issued by any circuit court commissioner or judge of a court of record, upon affidavit, showing the necessity or reason therefor, and, so far as known, the persons interested in such matter. The commission shall direct upon whom notice shall be served, and to what court the deposition shall be returned, and such court shall have custody and control thereof until required for use in such suit. Testimony taken under this section may be used in case it cannot again be obtained at the time of trial.

Perpetuation of testimony.

SEC. 11. Parties to actions and parties interested in suits to be begun may have testimony taken and returned in any manner agreed upon by stipulation in writing.

Testimony taken by stipulation.

SEC. 12. Depositions taken under this act may be read and considered in evidence at the trial or on any hearing, and on appeals and re-trials of the same cause of action, but the court shall have power to regulate the use, to prevent abuses

Depositions, how used.

thereof, and may order the retaking of testimony, or the production of the witness, if within the jurisdiction, notwithstanding that his deposition has been taken. In any case, either party, may obtain subpoena and compel the usual attendance and re-examination of the witness, notwithstanding his deposition has been taken, if he is within the jurisdiction of the court and able to attend, and give his testimony.

Fees for
taking
depositions.

SEC. 13. Fees for taking depositions shall be as follows: For taking, certifying, sealing and forwarding depositions, two dollars; and for each one hundred words contained in such deposition, ten cents, which shall be considered as costs in the case; and for copies of testimony furnished to any party, three cents for each one hundred words contained in such copy. Each party shall pay for his own examinations or cross-examinations in the first instance.

How paid.

Authentica-
tion of affi-
davit taken in
other state or
country.

SEC. 14. In cases where by law the affidavit of any person residing in another state of the United States, or in any foreign country, is required, or may be received in judicial proceedings in this State, to entitle the same to be read, it must be authenticated as follows:

1. It must be certified by the consul general, deputy consul general, or some consul or deputy consul of the United States resident in such foreign country, to have been taken and subscribed before him, specifying the time and place where taken and have the consular seal attached; or

2. It must be certified by some judge of a court having a seal to have been taken and subscribed before him, specifying the time and place where taken;

3. The genuineness of the signature of such judge, the existence of the court and the fact that such judge is a member thereof, must be certified by the clerk of the court under the seal thereof;

4. If such affidavit be taken in any other of the United States or in any territory thereof, it may be taken before a commissioner duly appointed and commissioned by the Governor of this State to take affidavits therein, or before any notary public or justice of the peace authorized by the laws of such state to administer oaths therein. The signature of such notary public or justice of the peace, and the fact that at the time of the taking of such affidavit the person before whom the same was taken was such notary public or justice of the peace, shall be certified by the clerk of any court of record in the county where such affidavit shall be taken, under the seal of said court.

Authentica-
tion of
records, etc.,
of courts.

SEC. 15. The records and judicial proceedings of any court in the several states and territories of the United States and of any foreign country shall be admitted in evidence in the courts of this State upon being authenticated by the attestation of the clerk of such court with the seal of such court annexed, or of the officer in whose custody such records are legally kept with the seal of his office annexed.

Of Copies of Records, Etc.

SEC. 16. Copies of such records and proceedings, in the courts of a foreign country, may also be admitted in evidence upon due proof:

Copies of records of foreign courts, how admitted.

1. That the copy offered has been compared by the witness with the original, and is an exact copy of the whole of such original;

2. That such original was in the custody of the clerk of the court, or other officer legally having charge of the same; and

3. That such copy is duly attested by a seal, which shall be proved to be the seal of the court in which such record or proceeding shall be.

SEC. 17. The preceding sections shall not prevent the proof of any record or judicial proceedings of the courts of any foreign country, according to the rules of the common law, in any other manner than that herein directed.

Other proofs of court records.

SEC. 18. A copy of any order, judgment or decree, of any court of record in this State, duly authenticated by the certificate of the judge, clerk or register of such court, under the seal thereof, shall be admissible in evidence in any court in this State, and shall be prima facie evidence of the jurisdiction of said court over the parties to such proceedings and of all facts recited therein, and of the regularity of all proceeding prior to, and including the making of such order, judgment or decree.

Authenticated copies of orders, etc.

SEC. 19. Copies of all papers, records, entries and documents, required or permitted by law to be filed by any public officer in his office, or to be entered or recorded therein and duly filed, entered or recorded according to law, certified by such officer to be a true transcript compared by him with the original in his office, shall be evidence in all courts and proceedings, in like manner as the original would be if produced.

Certified copies of records, etc.

SEC. 20. All conveyances and other instruments authorized by law to be filed or recorded, and which shall be acknowledged or proved according to law, and if the same shall have been filed or recorded, the record, or a transcript of the record, or a copy of the instrument on file certified by the officer in whose office the same may have been filed or recorded, may be read in evidence in any court within this State without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

Conveyances, etc.

SEC. 21. The record of deeds or other instruments affecting the title to lands heretofore recorded in counties in this State other than the one in which the lands described therein are located, or a certified copy thereof, shall be deemed prima facie evidence of the execution and delivery of such instrument, and as such shall be received in all courts in this State, and such certified copy may be recorded in the county in which such land is situated, with like effect as the original deed or other instrument.

Certified copies of deeds, etc.

Certificate
of paper, etc.,
not found.

SEC. 22. Whenever any officer to whom the legal custody of any paper, document or record shall belong, shall certify that he has made diligent examination in his office for such paper, document or record, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified, in all causes, matters and proceedings in the same manner and with the like effect as if such officer had personally testified to the same in the court, or before the officer before whom such cause, matter or proceeding may be pending.

Proceedings
before
justices of
the peace in
other states.

SEC. 23. The official certificate of any justice of the peace within any other state of the United States, of the proceedings and judgment in any case before him as such justice, with the certificate of the clerk of any court of record in the county or district in which such justice has executed his office, attested by his official seal, setting forth that the signature to the certificate of the justice is genuine, and that he was such justice at the date of such proceedings and judgment, shall be sufficient evidence of such proceedings and judgment.

Printed
copies of
constitution
and laws, etc.

SEC. 24. The printed copies of the constitution, laws and resolutions of this State, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof in all courts, and in all proceedings within this State.

Printed
copies of laws
of other states.

SEC. 25. Printed copies of the constitution, laws and resolutions of any other of the United States, or of any territory thereof or of any foreign state, if purporting to be published under the authority of the respective governments, or if commonly admitted and used as evidence in their courts shall be admitted in all courts, and in all proceedings within the State, as prima facie evidence thereof; and the courts of this State may take judicial notice thereof without their formal introduction in evidence.

Judicial
notice.

Laws, or-
dinances,
etc., of
municipal
council, etc.

SEC. 26. All laws, by-laws, regulations, resolutions and ordinances of the common council, or of the board of trustees of any incorporated city or village in this State may be read in evidence in all courts of justice and in all proceedings before any officer, body or board, in which it shall be necessary to refer thereto, either from a record thereof, kept by the clerk or recorder of such city or village, or from a printed copy thereof, purporting to have been published by authority of the common council or board of trustees, in a newspaper published in such city or village, or from any volume of ordinances, purporting to have been printed by authority of the common council or board of trustees of such city or village; and such record, certified copy or volume shall be prima facie evidence of the existence and validity of such laws, regulations, resolutions and ordinances, without proof of the enactment, publishing, or any other thing concerning the same.

Common
law of
other states.

SEC. 27. The unwritten or common law of any other of the United States, or of any territory thereof or of any foreign state or country, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts

Reports.

may also be admitted as evidence of such law; and the courts may take judicial notice of the same as in the case of statutes.

SEC. 28. Any device affixed to any deed or instrument in writing by way of seal, by any person signing the same, executed since the thirty-first day of December, eighteen hundred and twenty-seven, or hereafter to be executed, shall be received in all courts, and upon all occasions as evidence that the same deed or instrument was duly sealed, and equally valid and effectual, as if the same had been actually sealed; but this section shall not apply to official and corporate seals, in cases where, according to law, an actual sealing may be required.

Judicial
notice.
Any device
by way of seal.

Official or
corporate seal

SEC. 29. Whenever any certified copy of a judgment or decree shall have been, or shall be recorded in any register of deeds' office, such record may be read in evidence in all courts of this State, with like force and effect as such certified copy.

Certified
copies of
judgment,
etc.

SEC. 30. The original entry of any judgment or other proceeding, or a transcript from the docket of any justice of the peace of any judgment had before him; of the proceedings in the cause previous to judgment; of the execution issued thereon, if any, and the return to such execution, if any, when certified by the justice having control of such docket, shall be evidence in all courts to prove the facts stated in such originals or in such transcripts.

Original
entry or
transcript
from justice's
docket.

SEC. 31. The proceedings in any cause or matter, had before a justice, may also be proved by the oath of the justice; and in case of the death or absence of the justice, they may be proved by producing the original minutes of such proceedings, entered in a book kept by such justice, accompanied by proof of his handwriting, or they may be proved by producing copies of such minutes, sworn to by a competent witness, as having been compared by him with the original entries, with proof that such entries were in the handwriting of the justice.

May be
proved by
oath of
justice.
Death, etc.,
of justice.

SEC. 32. Copies of all papers, documents, plats, maps, entries, or records filed, entered, or recorded in any land office of the United States situated in the State of Michigan, certified by the register or receiver of such land office to be a correct transcript compared by him with the original in said land office, shall be evidence in all courts and proceedings in like manner and to the same extent as the original would be if produced.

Copies of
papers, plats
or maps, etc.,
in U. S. land
office.

SEC. 33. Copies of all papers, documents, maps, plats, entries, or records filed with the board of control of the Saint Mary's Falls Ship Canal, or entered in the records of the proceedings of said board of control, certified by the Auditor General of this State to be a true transcript compared by him with the original in the office of said board of control, shall be evidence in all courts and proceedings in like manner and to the same extent as the original would be if produced.

Records of
board of St.
Mary's canal.

SEC. 34. Any copy of the record of observations in regard to the condition of the weather taken under the direction of the signal service department of the United States, when certi-

Observations
of weather
service.

fied by the officer in charge thereof at the place where the same is taken and kept, that the same is a true copy of the record on file in said signal service office, may be received in evidence in any civil cause in any court, and shall be prima facie evidence of the facts and circumstances therein contained and stated.

Proof of publication.

SEC. 35. When notice of any application to any court or judicial officer for any proceeding authorized by law, is required by law to be published in one or more newspapers, an affidavit of the printer of any such paper, or of his foreman or principal clerk, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the times when, and the paper in which such notice was published may be filed with the proper officer of the court, or with the judicial officer before whom such proceeding shall be pending, at any time within six months after the last day of the publication of such notice.

Proof of publication of notice of sale.

SEC. 36. When any notice of a sale of real property is required by law to be published in any newspaper, an affidavit of the printer of such paper, or of his foreman, or principal clerk, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the times when and the paper in which it was published, may be filed at any time within six months after the last day of such publication, with the county clerk of the county in which the premises sold are situated, or if such sale were made in pursuance of the order of any judge of probate or court of chancery, such affidavit may be filed with such judge of probate or with a clerk of such court of chancery, as the case may be.

Presumptive evidence.

SEC. 37. The original affidavit so filed pursuant to the two last sections, and copies thereof duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, of the facts contained in such affidavits.

Affidavit of printer prima facie evidence.

SEC. 38. The affidavit of the printer, or foreman, or clerk of any printer of a public newspaper, published in this State, of the publication of any notice or advertisement, which by any law of this State shall be required to be published in such newspaper, shall be entitled to be read in all courts of justice in this State, and in all proceedings before any officer, body or board in which it shall be deemed necessary to refer thereto, and shall be prima facie evidence of such publication, and of the facts therein stated.

Copy of affidavit, how certified.

SEC. 39. Whenever a certified copy of any affidavit, record, document or paper, is declared by law to be evidence, such copy shall be certified by the clerk or officer in whose custody the same is by law required to be, to have been compared by him with the original, and to be a correct transcript therefrom, and of the whole of such original; and if such officer have any official seal by law, such certificate shall be attested by such seal; and if such certificate be given by the clerk of any county, in his official character as such clerk, it shall be attested by the seal of the court of which he is clerk.

Sec. 40. But the preceding section shall not be construed to require the affixing of the seal of any court to any certified copy of any rule or order made by such court, or of any paper filed therein, when such copy is used in the same court, or before any officer thereof; nor to require the seal of the supreme court to be affixed to a certified copy of any rule or order of that court, when used in any circuit court.

When seal not to be affixed.

Sec. 41. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law, for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer endorsed thereon, shall entitle such instrument to be received in evidence on the trial of any action, with the same effect, and in the same manner, as if such instrument were a conveyance of real estate.

Acknowledgment of written instruments, effect of.

Sec. 42. The original certificates and records of marriage made by the minister, justice or other person authorized to solemnize marriages, as prescribed by law, and the record thereof made by the county clerk, or a copy of such record, duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Certificates and records of marriage.

Sec. 43. The record of any license to marry, or of any marriage certificate, in any county clerk's office, or a certified copy thereof, shall be prima facie evidence in any court or proceedings in this State, with the same force and effect as if the original were produced, both as to the facts therein contained and as to the genuineness of the signatures thereto.

Record of license to marry.

Sec. 44. Certificates of the purchase of public lands, signed by the receiver, shall be evidence in any court in this State, that the possession of the lands described in said certificate or certificates, is in the person or persons, his, her, or their heirs or assigns, holding said certificate or certificates, as against any person or persons, not having a better title to such land than actual possession.

Certificates of purchase of public lands.

Sec. 45. Whenever it becomes necessary to show the breeding of any horse in any action at law or in equity, the same may be shown by Wallace's Year Book, Wallace's American Trotting Register, The American Percheron Horse Breeders' and Importers' Association, Percheron Society of America, The American Percheron Horse Breeders' Association or the Percheron Stud Book of America; and whenever a horse is registered in any of the registers aforesaid, or with said society or either of said associations, the record of such registration or the society's or association's certificate of such registration under its corporate seal shall be prima facie evidence of the breeding of such horse.

Breeding of horses, how shown.

Record of registration.

Miscellaneous Provisions.

Seal presumptive evidence of sufficient consideration.

SEC. 46. In any action upon a sealed instrument, and where a set-off is founded on any sealed instrument, the seal thereof shall only be presumptive evidence of a sufficient consideration, which may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed.

Incorporation, etc., proof of.

SEC. 47. In any suit or proceeding, civil or criminal hereafter instituted in any of the courts of this State, wherein it shall become material or necessary to prove the incorporation of any company or corporation, or the existence of any joint stock company or association, whether the same be a foreign or domestic corporation, company, or association, evidence that such corporation, company, or association is doing business under a certain name shall be prima facie proof of its due incorporation or existence pursuant to law, and of its name.

Copartnership, proof of.

SEC. 48. In any suit or proceeding hereafter instituted in any of the courts of this State, wherein it shall become material or necessary to prove the copartnership of any firm or association the plaintiffs may cause to be served upon the defendant, with a copy of the declaration filed in the cause, or with the process by which suit is commenced, an affidavit stating that the plaintiffs were the persons comprising such partnership at the time the contract in question was made, or the cause of action accrued; and such affidavit shall be prima facie evidence of such existence of such partnership or association, unless the defendant shall file with his plea an affidavit denying the existence of such partnership or association.

Seal of corporation, etc., to be prima facie proof.

SEC. 49. Any corporation, joint stock company, or partnership association, limited, may have a common seal which it may alter at pleasure, and such seal affixed to any instrument purporting to be executed by any such corporation, joint stock company or partnership association, limited, foreign or domestic, shall be prima facie proof of the due adoption of said seal, and that it was affixed to said instrument by due authority, and that said instrument was in fact lawfully executed by such corporation, joint stock company or partnership association, limited.

Subscribing witness, need not be called.

SEC. 50. Whenever upon the trial of any action, civil or criminal, or upon the hearing of any judicial proceeding, a written instrument is offered in evidence, to which there is a subscribing witness, it shall not be necessary to call such subscribing witness, but such instrument may be proved in the same manner as it might be proved if there were no subscribing witness thereto, except in cases of written instruments to the validity of which one or more subscribing witnesses are required by law.

Except when required by law.

Proof of signatures or handwriting.

SEC. 51. Whenever in any suit or proceeding in any of the courts of this State, it shall be necessary or proper to prove the signature or the handwriting of any person, it shall be competent to introduce in evidence for the purpose of com-

parison, any specimen or specimens of the handwriting or signature of such person, admitted or proved to the satisfaction of the court to be genuine, whether or not the paper on which such handwriting or signature appears is one admissible in evidence or connected with the case or not: *Provided*, That if such paper is not one admissible in evidence for some other purpose, or connected with the case, it shall not be admissible in evidence for the purpose of comparison unless it was made before the controversy arose concerning which such suit or proceeding was brought.

*Proviso,
paper not
admissible
in evidence.*

SEC. 52. In all actions brought in any of the courts of this State, to recover the amount due on an open account or upon an account stated, if the plaintiff or some one in his behalf shall make an affidavit of the amount due, as near as he can estimate the same, over and above all legal set-off, and annex thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant, with a copy of the declaration filed in the cause, or with the process by which such action is commenced, such affidavit shall be deemed prima facie evidence of such indebtedness, unless the defendant with his plea shall, by himself or agent, make an affidavit and serve a copy thereof on the plaintiff or his attorney, denying the same; and if the defendant in any action shall give notice, with his plea of a set-off, founded upon an open account, or upon an account stated, and shall annex to such plea and notice a copy of such account, and an affidavit made by himself or by some one in his behalf, showing the amount or balance claimed by the defendant upon such account, and that such amount or balance is justly owing and due to the defendant, or that he is justly entitled to have such account, or said balance thereof, set off against the claim made by said plaintiff, and shall serve a copy of such account and affidavit, with a copy of such plea and notice, upon the plaintiff or his attorney, such affidavit shall be deemed prima facie evidence of such set-off, and of the plaintiff's liability thereon, unless the plaintiff, or some one in his behalf, shall within ten days after such service in causes in the circuit court, and before trial in other cases, make an affidavit denying such account or some part thereof, and the plaintiff's indebtedness or liability thereon and serve a copy thereof upon the defendant or his attorney, and in case of a denial of part of such set-off, the defendant's affidavit shall be deemed to be prima facie evidence of such part of the set-off as is not denied by the plaintiff's affidavit: *Provided*, That any affidavit in this section mentioned shall be deemed sufficient if the same is made within ten days next preceding the issuing of the writ or filing of the declaration or plea.

*Proof of open
account or
account
stated.*

Set-off.

*Proviso,
sufficiency
of affidavit.*

SEC. 53. In all trials, hearings, and proceedings in any cause or suit in any court, or before any officer, arbitrators, or referees, books of accounts, containing charges or entries for money paid, laid out, furnished or lent, shall be received and admitted as evidence, and deemed to be evidence of such

*Books of
account.*

charges and entries, and that such moneys were so paid, laid out, furnished or lent, as is in such books charged or entered, and of the liability of the person charged therefor, in the same manner and to the same extent as books of account containing charges for goods, wares, or merchandise sold and delivered, are received and admitted as evidence of sale and delivery of such goods and merchandise, and of the liability of the person charged therefor: *Provided*, This section shall not apply to cases where persons acting or having acted as commission merchants or agents for the sale of produce, grain, or other property on commission, except as to the amount charged as commissions for selling, or buying such produce, grain or other property unless accompanied by a voucher or receipt for the money so claimed to be laid out, lent, or furnished.

Proviso,
when section
not to apply.

Proof and
disproof
of loss of in-
strument.

SEC. 54. Whenever a party to any instrument shall have been permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court on oath, to disprove such loss, and to account for such instrument.

Proof of lost
negotiable
promissory
note, etc.

SEC. 55. In any suit founded on any negotiable promissory note or bill of exchange, or in which such note, if produced, might be allowed as a set-off in the defense of any suit, if it appear on the trial that such note or bill was lost while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof may be given on such trial, and notwithstanding such bill or note was negotiable, such party shall be entitled to recover the amount due thereon, as if such note or bill had been produced.

Bond of
indemnity
to be given.

SEC. 56. But to entitle a party to such recovery, he shall execute a bond to the adverse party, in a penalty at least double the amount of such note or bill, with two sureties to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party, his heirs, and personal representatives against all claims by any other person on account of such note or bill, and against all costs and expenses by reason of such claim: *Provided*, That such party shall not recover costs in such case, unless (before the commencement of such suit) he shall have executed and tendered to such adverse party, or, in case of several defendants, to one of such defendants, a bond conditioned as aforesaid, with sureties as aforesaid, approved by the judge or clerk of such court, or the circuit court commissioner of the county where such suit is brought, or, in actions brought before justices of the peace, by such justice: And *Provided further*, That upon filing such last mentioned bond with the clerk of said court, or with such justice, at the time of the commencement of such suit, no other or further bond shall be necessary to entitle such party to such recovery upon such note or bill, with costs as aforesaid.

Proviso,
costs.

Further
proviso,
bond at com-
mencement
of suit.

Admission of
member of
corporation.

SEC. 57. In suits by or against a corporation, the admission of any member thereof not named on the record as a party to

such suit, shall not be received as evidence against such corporation, unless such admission was made concerning some transaction, in which such member was the authorized agent of such corporation.

SEC. 58. In proceedings for the probate of wills, it shall not be necessary for the proponent in the first instance to introduce any proof to show the competency of the decedent to make a will, but the like presumption of mental competency shall obtain as in other cases. Competency to make will.

SEC. 59. Any competent witness in a cause shall not be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question may establish, or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit; but this provision shall not be construed to require a witness to give any answer which will have a tendency to accuse himself of any crime or misdemeanor, or to expose him to any penalty or forfeiture, nor in any respect to vary or alter any other rule respecting the examination of witnesses. When witness not excused from answering.

SEC. 60. No person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements and documents in any cause, suit or proceeding, civil, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of act two hundred fifty-five of the public acts of eighteen hundred ninety-nine, relating to trusts and combinations in restraint of trade or of any act amendatory or declaratory thereof, or supplemental thereto in any court of competent jurisdiction, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to fine, punishment, penalty or forfeiture. The attendance and testimony of such persons in such cases and the production of such books, papers, contracts, agreements and documents may be enforced in the same manner as in any other cause, suit or proceeding. But no person shall be prosecuted or subjected to any fine, imprisonment, penalty or forfeiture for or on account of any matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, in any such case, suit or proceeding. No testimony so given by him shall in any prosecution be used as evidence, either directly or indirectly, against him: *Provided*, That immunity shall extend only to a natural person who in obedience to a subpoena gives testimony under oath, or produces evidence, documentary or otherwise, under oath: *Provided further*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. Construction of provision.

SEC. 61. No minister of the gospel, or priest of any denomination whatsoever, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination. Witnesses in prosecutions under act 255, of 1899.

Immunity from prosecution.

Proviso, extent of immunity.

Further proviso, no person exempt from prosecution for perjury.

Minister or priest not to disclose confessions.

Of Privilege and Competency of Witnesses.

Physician
not allowed
to disclose
professional
information.

Proviso,
when privilege
waived.

Further
proviso,
waiver by
heirs.

No person
excluded for
crime, interest
or relation-
ship.

Witness in
own behalf.

No witness
disqualified
for interest,
etc.

Proviso,
defendant
in criminal
case.

SEC. 62. No person duly authorized to practice medicine or surgery shall be allowed to disclose any information which he may have acquired in attending any patient in his professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: *Provided, however,* That in case such patient shall bring an action against any defendant to recover for any personal injuries, or for any malpractice, if such plaintiff shall produce any physician as a witness in his own behalf, who has treated him for such injury, or for any disease or condition, with reference to which such malpractice is alleged, he shall be deemed to have waived the privilege hereinbefore provided for, as to any or all other physicians, who may have treated him for such injuries, disease or condition: *Provided further,* That after the decease of such patient, in a contest upon the question of admitting the will of such patient to probate, the heirs at law of such patient, whether proponents or contestants of his will, shall be deemed to be personal representatives of such deceased patient for the purpose of waiving the privilege hereinbefore created.

SEC. 63. No person shall be excluded from giving evidence in any matter, civil or criminal, by reason of crime or for any interest of such person in the matter, suit, or proceeding in question, or in the event of such matter, suit or proceeding, in which such testimony may be offered, or by reason of marital or other relationship to any party thereto; but such interest, relationship, or conviction of crime, may be shown for the purpose of drawing in question the credibility of such witness, except as is hereinafter provided.

SEC. 64. On the trial of any issue joined, or in any matter, suit or proceeding, in any court, or on any inquiry arising in any suit or proceeding in any court, or before any officer or person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties to any such suit or proceeding named in the record, and persons for whose benefit such suit or proceeding is prosecuted, or defended, may be witnesses therein in their own behalf or otherwise, in the same manner as other witnesses, except as hereinafter otherwise provided; and the deposition of any such party or person may be taken and used in evidence under the rules and statutes governing depositions, and any such party or person may be proceeded against and compelled to attend and testify, as is provided by law for other witnesses. No person shall be disqualified as a witness in any civil or criminal case or proceeding by reason of his interest in the event of the same as a party or otherwise or by reason of his having been convicted of any crime; but such interest or conviction may be shown for the purpose of affecting his credibility: *Provided, however,* That a defendant in any criminal case or proceeding shall only at his own request be deemed a competent witness, and his neglect to testify shall not create any pre-

sumption against him, nor shall the court permit any reference or comment to be made to or upon such neglect.

SEC. 65. When a suit or proceeding is prosecuted or defended by the heirs, assigns, devisees, legatees, or personal representatives of a deceased person, the opposite party, if examined as a witness in his own behalf, shall not be admitted to testify at all to matters which, if true must have been equally within the knowledge of such deceased person; and when any suit or proceeding is prosecuted or defended by any surviving partner or partners, the opposite party, if examined as a witness, in his own behalf shall not be admitted to testify at all in relation to matters which, if true, must have been equally within the knowledge of the deceased partner, and not within the knowledge of any one of the surviving partners. No person who shall have acted as an agent in the making or continuing of a contract with any person who may have died, shall be a competent witness in any suit involving such contract, as to matters occurring prior to the death of such decedent, on behalf of the principal to such contract against the legal representatives or heirs of such decedent, unless he shall be called by such heirs or legal representatives. And when any suit or proceeding is prosecuted or defended by any corporation, the opposite party, if examined as a witness in his own behalf, shall not be admitted to testify at all in relation to matters which, if true, must have been equally within the knowledge of a deceased officer or agent of the corporation, and not within the knowledge of any surviving officer or agent of the corporation, nor when any suit or proceeding is prosecuted or defended by the heirs, assigns, devisees, legatees, or personal representatives of a deceased person against a corporation (or its assigns) shall any person who is or has been an officer or agent of any such corporation be allowed to testify at all in relation to matters which, if true, must have been equally within the knowledge of such deceased person: *Provided*, That whenever the words "the opposite party" occur in this section it shall be deemed to include the assignors or assignees of the claim or any part thereof in controversy: *Provided further*, That when the testimony of any person would be barred in case of the death of any of the persons hereinbefore mentioned, it shall also be barred if such person shall have been adjudged to be and still is at the time of the trial insane or mentally incompetent, as to all matters, which, if true, must have been equally within his knowledge at a time when he was sane and mentally competent: And *Provided further*, That whenever the deposition, affidavit or testimony of such party taken in his lifetime or when mentally sound shall be read in evidence in such suit or proceeding, the affidavit or testimony of the other party shall be admitted in his own behalf on all matters mentioned or covered in such deposition, affidavit or testimony: And *Provided further*, That when the testimony or deposition of any witness has once been taken and used (or

Testimony of opposite party in suits of heirs, assigns, etc.

Proviso, definition of "opposite party."

Proviso, insane persons.

Further proviso, affidavit of insane person.

Further proviso, testimony taken while competent, etc.

shall have heretofore been taken and used) upon the trial of any cause, and the same was, when so taken and used, competent and admissible under this section, the subsequent death or incompetency of such witness or of any other person shall not render such testimony incompetent under this section, but such testimony shall be received upon any subsequent trial of such cause.

Right to cross-examine opposite party or agent.

Sec. 66. Hereafter in any suit or proceeding in any court of law or equity in this State, either party, if he shall call as a witness in his behalf, the opposite party, employe or agent of said opposite party, or any person who at the time of the happening of the transaction out of which such suit or proceeding grew, was an employe or agent of the opposite party, shall have the right to cross-examine such witness the same as if he were called by the opposite party; and the answers of such witness shall not interfere with the right of such party to introduce evidence upon any issue involved in such suit or proceeding, and the party so calling and examining such witness shall not be bound to accept such answers as true.

Party not bound by answers.

Husband and wife.

Sec. 67. A husband shall not be examined as a witness for or against his wife without her consent; nor a wife for or against her husband without his consent, except in suits for divorce and in cases of prosecution for bigamy, and where the cause of action grows out of a personal wrong or injury done by one to the other, or grows out of the refusal or neglect to furnish the wife or children with suitable support, and except in cases of desertion or abandonment, and cases arising under act one hundred thirty-six of the Public Acts of nineteen hundred five, relating to marriage, and cases where the husband or wife shall be a party to the record in a suit, action, or proceeding, where the title to the separate property of the husband or wife so called or offered as a witness, or where the title to property derived from, through or under the husband or wife so called or offered as a witness, shall be the subject matter in controversy or litigation in such suit, action or proceeding, in opposition to the claim or interest of the other of said married persons, who is a party to the record in such suit, action or proceeding; and in all such cases, such husband or wife who makes such claim of title, or under or from whom such title is derived, shall be as competent to testify in relation to said separate property and the title thereto without the consent of said husband or wife, who is a party to the record in such suit, action or proceeding, as though such marriage relation did not exist; nor shall either, during the marriage or afterwards, without the consent of both, be examined as to any communication made by one to the other during the marriage, but in any action or proceeding instituted by the husband or wife, in consequence of adultery, the husband and wife shall not be competent to testify.

Child under ten years.

Sec. 68. Whenever a child under the age of ten years is produced as a witness, the court shall by an examination made

by itself publicly, or separate and apart, ascertain to its own satisfaction whether such child has sufficient intelligence and sense of obligation to tell the truth to be safely admitted to testify; and in such case such testimony may be given on a promise to tell the truth instead of upon oath or statutory affirmation, and shall be given such credit as to the court or jury, if there be a jury, it may appear to deserve.

SEC. 69. No expert witness shall be paid, or receive as compensation in any given case for his services as such, a sum in excess of the ordinary witness fees provided by law, unless the court before whom such witness is to appear, or has appeared, awards a larger sum. Any such witness who shall directly or indirectly receive a larger amount than such award, and any person who shall pay such witness a larger sum than such award, shall be guilty of a contempt of court, and on conviction thereof be punished accordingly.

Compensation of expert witness.

Penalty for receiving or paying larger sum. 1

SEC. 70. No more than three experts shall be allowed to testify on either side as to the same issue in any given case: *Provided*, The court trying such case, may, in its discretion, permit an additional number of witnesses to testify as experts.

Number of experts.

Proviso, additional number.

SEC. 71. The provisions of the two preceding sections shall not be applicable to witnesses testifying to the established facts, or deductions of science, nor to any other specific facts, but only to witnesses testifying to matters of opinion.

Application of last two sections.

Of Compelling the Attendance and Testimony of Witnesses.

SEC. 72. If the plaintiff in any action refuse to appear as a witness on being personally subpoenaed, or being present refuse to swear or to testify, except where he is privileged from answering, the case shall be dismissed. If the defendant refuse to appear on being personally subpoenaed, or being present refuse to swear or to testify, except where he is privileged from answering, the plaintiff's demand shall be taken as confessed, no set-off allowed, and judgment entered accordingly: *Provided*, That the provisions of this section shall not be construed as to in any way abrogate or modify the provisions of law with reference to the punishment of witnesses for contempt of court in refusing to testify or otherwise.

Refusal of plaintiff.

Of defendant.

Proviso, punishment for contempt.

SEC. 73. The service of a subpoena to compel the attendance of any witness shall be made as follows:

Service of subpoena.

1. The original writ under the seal of the court, or of the officer issuing the same, shall be exhibited to the witness;

2. A copy of such writ, or a ticket containing its substance, shall be delivered to the witness;

3. The fees allowed by law to such witness for traveling to, and returning from the place where he is required to attend, and the fees allowed for one day's attendance, shall be paid or tendered to such witness.

SEC. 74. Every person who shall be duly subpoenaed to attend as a witness in any court within this State, or to attend any officer of a court of record, empowered to receive evidence, or any commissioner appointed by such court to take

Duty of witness to attend.

Failure.	<p>testimony, or any referees or auditors appointed according to law to hear any cause or matter, or any notary public or commissioner before whom any affidavit or deposition is to be taken, shall be bound to attend according to the command of such subpoena and testify; and for every failure so to attend and testify, without a reasonable excuse, shall be deemed guilty of a contempt of the court out of which such subpoena issued, shall be responsible to the aggrieved party for the loss and hindrance sustained by such failure, and for all other damages sustained thereby; and shall be further liable to the aggrieved party in the sum of fifty dollars as additional damages, to be recovered in the same action.</p>
Warrant for apprehension.	<p>SEC. 75. In case of the failure of any witness so to attend as above provided, the court, judge or officer issuing the subpoena, upon due proof of the service thereof, and of the failure of such witness, shall issue his warrant to the sheriff of the county, to apprehend such witness and bring him before such judge or officer to be examined, or to bring him before any person named in a commission issued by a court of any other state or country to take testimony for the like purpose.</p>
Refusal to answer, etc.	<p>SEC. 76. If any witness attending before any court, judge, officer or commissioner, pursuant to a subpoena, or brought before them, or either of them, shall, without reasonable cause refuse to be examined, or to answer any legal and pertinent question, or to subscribe his deposition after the same has been reduced to writing, the officer issuing such subpoena shall, by warrant, commit such witness to the common jail of the county in which he resides, there to remain until he submits to be examined, or to answer, or to subscribe his deposition, as the case may be, or until he be discharged according to law.</p>
Penalty.	<p>SEC. 77. Every warrant of commitment issued by any court, judge or officer, pursuant to the provisions of this chapter, shall specify therein particularly the cause of such commitment, and if such commitment be for refusing to answer any question, such question shall be stated in the warrant.</p>
Commitment to specify cause.	<p>SEC. 78. Every warrant to apprehend or commit any witness, authorized by this chapter, shall be directed to the sheriff of the county where such witness may be and shall be executed by him in the same manner as process issued by courts of record.</p>
How warrant executed.	<p>SEC. 79. The preceding provisions in relation to the apprehension and commitment of witnesses, shall not apply to any case where other special provision is made by law for compelling the attendance of witnesses.</p>
Application of provisions.	<p>SEC. 80. The usual mode of administering oaths now practiced in this State, by the person who swears holding up the right hand, shall be observed in all cases in which an oath may be administered by law except in the cases herein otherwise provided.</p>
Mode of administering oaths.	<p>SEC. 81. Every person conscientiously opposed to taking an oath, shall, when called on to take an oath, be permitted</p>
Affirmation.	

instead of swearing, solemnly and sincerely to affirm, under the pains and penalties of perjury.

SEC. 82. No person shall be deemed incompetent as a witness, in any court, matter or proceeding, on account of his opinions on the subject of religion; nor shall any witness be questioned in relation to his opinions thereon; either before or after he shall be sworn. No incompetency on account of religion.

SEC. 83. Whenever any oath or affidavit is or may be required or authorized by law in any cause, matter or proceeding, except oaths to witnesses and jurors in the trial of a cause, and such other oaths as are or may be required by law to be taken before particular officers, the same may be taken before any justice, judge or clerk of any court of record, circuit court commissioner, notary public, or justice of the peace. Who authorized to take oaths.

SEC. 84. Oaths, affidavits and depositions, in any cause, matter or proceeding in any court of record, may also be taken before any commissioner appointed by such court for that purpose. Commissioner to take oaths, etc.

CHAPTER XVIII.

Trials in Actions At Law and in Equity and Proceedings Incident Thereto.

Term Calendar.

SECTION 1. Whenever any cause at law or in chancery pending in the circuit court of any county of this State shall be at issue as to all the parties, or when a default shall have been entered or filed or when a return to any appeal shall be filed in said court, on or before the fourteenth day before the first day of any term of court, it shall be the duty of the clerk of said court to place the same upon the calendar for the next ensuing term of said court in its appropriate place, and unless sooner tried thereafter, to place said cause on the calendar for each succeeding term, until disposed of. Hereafter no notice of trial, or note of issue shall be necessary in any cause pending in said circuit courts. Causes shall be placed upon the calendar in the order in which issue was joined, or appeal filed. When cause to be placed on calendar.

SEC. 2. All causes in which no action has been taken or progress made for more than one year unless by reason of the business of the court the same shall not have been reached, shall be placed upon said calendar separate and apart from all other causes, under the following heading: "Causes in which no progress has been made for more than one year;" and on the first day of each term, any cause appearing under this heading shall be dismissed by the court for want of prosecution, but without prejudice, at the cost of the party Dismissal for want of prosecution.

by whom it was brought into court, unless cause be then and there shown to the contrary.

Dismissal at
end of
further time.

SEC. 3. If further time for the trial of such issue be allowed by the court, and the plaintiff shall neglect to try the same within the time so allowed, the court shall dismiss the action as above provided.

Copies of
calendar.

SEC. 4. The clerk shall cause printed copies of said calendar to be provided at least five days prior to the first day of each term of court, and shall mail or deliver a copy of said calendar to each attorney, or firm of attorneys, representing any party in any action or proceeding that is upon the calendar.

Cases at
issue later
than fourteen
days before
term.

SEC. 5. Cases in which issue shall be joined, or appeal filed, after the fourteenth day before the first day of any term of any court, may be placed upon the calendar at any time before or during the term, at the request of the attorney for any party thereto, which said attorney shall forthwith give notice in writing to all of the parties to said cause, or their attorneys, of the fact of placing such cause upon the calendar, and upon the giving of such notice, after the lapse of fourteen days the same shall stand for trial the same as other cases.

Cases in
counties of
200,000 popu-
lation.

SEC. 6. Whenever a cause, either at law or in chancery, shall be at issue in the circuit court for any county of this State having a population of two hundred thousand or more, either party or the attorney for any party, may request the clerk of said court to place the same upon a list to be by him prepared, of causes ready for trial, and said cause shall then be in position, after the lapse of one week, to be tried as the judges of said court may from time to time direct.

Printed lists
of certain
cases ready
for trial.

SEC. 7. The clerk of said courts in the counties mentioned in the preceding section, shall monthly prepare printed lists of enough cases ready for trial and at issue, under the direction of the court, as will suffice to keep said court busy for one calendar month, and the causes on said list shall stand for trial before said court without further notice, in their order as directed by said court, except the said court, may assign from day to day, a still smaller number to facilitate its work, said court being hereby authorized at any time it may find its monthly call exhausted to make another call and have the clerk of such court print the same at the expense of the county, in order that said work may be expedited in said courts.

Oral Evidence on Hearing of Motions.

Witnesses
at hearing
of motions.

SEC. 8. Upon the hearing of any motion or petition where any question of fact is involved, the court hearing such motion or petition, may in its discretion, if it deems it necessary in order to reach a just conclusion as to such facts, require the production of all, or any of the witnesses having knowledge of the matters of fact involved on such motion or petition for examination before him in open court.

Of Summary Judgments.

SEC. 9. At any time after any cause arising upon contract or judgment, or statute shall be at issue, upon motion of the plaintiff, after the usual notice to the defendant, supported by the affidavit of the plaintiff, or any one in his behalf having knowledge of the facts, verifying the plaintiff's cause of action, and stating the amount claimed, and his belief that there is no defense to the action, the court shall enter a judgment in favor of the plaintiff, unless the defendant shall prior to, or at the time of hearing said motion, make and file an affidavit of merits. Said affidavit of merits shall state whether or not the defense claimed therein applies to the whole of the plaintiff's claim, and if not, it shall state definitely what item or items of the plaintiff's claim and the amount thereof, is admitted.

In what
causes
rendered.

Affidavit
of merits.

SEC. 10. If in any case it appear upon the trial thereof to the satisfaction of the court, than any affidavit of merits made therein, for the purpose of preventing a summary judgment, or for the purpose of procuring a continuance, was not made in good faith, but was made solely for the purpose of delay, the court shall award to the plaintiff in the judgment rendered therein, double the amount of the costs taxable in the cause.

Affidavit
not made in
good faith.

SEC. 11. Every variance between process, pleadings, or any instrument in writing, recited or referred to in any other process, pleading or record, and every mistake in the name of any officer or other person, or in stating any day, month or year, or in the description of any property, in any pleading or record, shall be disregarded upon the trial of such cause, and after a verdict therein, unless such variance or mistake be calculated to surprise or mislead the adverse party, and to prevent his making due preparation for a full answer on the merits, to the matter concerning which such variance or mistake shall have been made.

Variances
disregarded
unless
calculated to
mislead, etc.

SEC. 12. All issues of law shall be tried by the court, and all the issues and questions of fact, shall be tried by the court, unless a jury be demanded by one of the parties, in a manner prescribed by the rules of the court: *Provided*, That in all actions of tort, and in all other actions, the subject matters whereof are, in the opinion of the court, peculiarly proper for the consideration of a jury, it shall be competent for the court to order the cause to be tried by a jury.

Issues, how
tried.

Proviso,
when court
may order
jury.

SEC. 13. Upon the trial by the court of any question of fact or law, at law or in chancery, or any incidental issue arising therefrom, the decision of the court shall be given within sixty days from the time such issue or cause was submitted to him.

Decision
to be given
within 60
days.

SEC. 14. In giving the decision in actions at law, the court shall specify in writing the facts found and the conclusions of law therein, upon the request of either party. Such findings shall be forthwith filed with the clerk of the court and judgment entered thereon, and notice of the entry

Facts and
conclusions
of law.

of such judgment shall be given to the parties, or their attorneys, by said clerk.

Exceptions
and assign-
ment of error.

SEC. 15. In such cases, either party may file exceptions to the findings of facts, that such findings are against the clear weight of evidence, and may assign error upon such exceptions, and if an appeal be taken, the same shall be reviewed by the supreme court.

Of Tender and Offer of Judgment.

Tender, how
and when
may be made.

SEC. 16. When any action at law shall be commenced, for the recovery of a sum certain, or which may be reduced to a certainty by calculation, or for a casual or involuntary trespass or injury, the defendant, in any stage of the proceedings before trial in such causes, or before such damages shall have been assessed, may tender to the plaintiff, or his attorney, any sum of money which such defendant shall conceive sufficient amends for the injury done, for which such action or proceeding was instituted, or sufficient to pay the plaintiff's demand, together with the costs of such action or proceeding, to the time of making such tender.

Interest and
costs not to be
recovered.

SEC. 17. If it shall appear upon the trial of the cause, or upon the assessment of damages, that the amount so tendered was sufficient to pay the plaintiff's demand, or was a sufficient amends for the injury done, and the costs of the suit or proceeding up to the time of such tender, the plaintiff shall not be entitled to recover or collect any interest on such demand from the time of such tender, or any costs incurred subsequent to that time, but shall be liable to the defendant for the costs incurred by him subsequent to such time.

Liability
for costs.

Offer of
judgment,
how made.

SEC. 18. In any action at law, founded upon contract for the payment of money in a court of record, the defendant may at any time before the trial, serve upon the plaintiff an offer, in writing, to allow judgment to be taken against him for the sum in said notice specified, with costs incurred up to the time of serving such offer; if the plaintiff accept the offer, and give notice thereof, in writing, within ten days, he may file the offer, with an affidavit of service of notice of acceptance. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but must pay the defendant's costs from the time of the offer.

Liability
for costs.

Offer of
damages at
specified sum.

SEC. 19. In any such action at law, the defendant may, with his plea, serve upon the plaintiff an offer, in writing, that if he fail in his defense, the damage may be assessed at a specified sum; and if the plaintiff signify his acceptance thereof, in writing, within ten days, the issue upon the trial shall be whether the defendant is indebted to the plaintiff for the causes stated in the plaintiff's declaration, and the finding of the court or verdict of the jury shall be "for the plaintiff," or "for the defendant;" if such finding or verdict

Finding.

shall be for the plaintiff, he shall be entitled to judgment for the sum mentioned in the said offer and acceptance.

SEC. 20. If the plaintiff does not accept the offer, he shall prove his damages as if it had not been made, and shall not be permitted to give it in evidence; and if the damages assessed in his favor shall not exceed the sum mentioned in the offer, the defendant shall recover his expenses incurred in consequence of any necessary preparation or defense in respect to the question of damages; such expense shall be ascertained at the trial.

Offer not accepted.

Expenses.

Of Jury Trials.

SEC. 21. In chancery cases if there be an issue of fact which, in the opinion of the court, shall render the intervention of a jury necessary or proper, said court shall, on request of either party, order a jury impaneled for the trial thereof, and the verdict of such jury may be used upon the hearing of the cause.

When may be impaneled in chancery.

SEC. 22. In every case where a trial by jury may be demanded, the party making the demand shall pay to the clerk of the court the sum of three dollars before the impaneling of said jury shall be begun. Such sum shall be taxed in favor of the party paying the same, in case he recovers a judgment for his costs.

Fee payable to clerk.

SEC. 23. Trials of fact, by jury, in every court of record of common law jurisdiction, shall be had by jurors drawn or ordered summoned and returned, in the manner hereinbefore directed, except as otherwise provided by law; and no alien shall be entitled to a jury of part aliens or strangers, in any case whatever.

Trials of fact, how had.

Alien.

SEC. 24. It shall not be a cause of challenge to any panel or array of jurors, in any cause, that the clerk of the county who drew them was a party or interested in such cause, or was counsel or attorney for, or related to either party therein.

Interest of clerk.

SEC. 25. It shall not be a good cause of challenge to the panel or array of jurors in any cause, if such jurors shall have been drawn in the manner hereinbefore provided, that they were summoned by the sheriff who was a party, or interested in such cause, or related to either party therein, unless it be alleged in such challenge, and be satisfactorily shown, that some of the jurors drawn by the clerk were not summoned, and that such omission was intentional.

Interest of sheriff.

SEC. 26. In penal actions, for the recovery of any sum, it shall not be a good cause of challenge to the jurors summoned, or to any officer summoning them, that such juror or officer is liable to pay taxes in any county, city, village, township or district, which may be benefited by such recovery.

Liability to pay taxes, etc.

SEC. 27. On the trial of every action in which a county, city or village, shall be interested, the electors and the inhabitants of such county, city or village, shall be competent jurors.

Electors, etc., competent jurors.

Jurors
summoned,
to be written
on separate
pieces of
paper.

SEC. 28. On the return of every list of petit jurors summoned by the sheriff to attend any circuit court, the clerk of such circuit court shall cause the names of the several persons so returned, and who shall not be discharged or excused by the court, to be written on several and distinct pieces of paper; and shall roll or fold such pieces of paper, each in the same manner, as near as may be, and so as to resemble each other as much as possible, and so that the name written thereon shall be concealed.

Deposited
in box.

SEC. 29. The said pieces of paper shall be deposited in a sufficient box, from which they shall be drawn as hereinafter provided.

How jury
drawn.

SEC. 30. When an issue shall be brought on for trial, the clerk of the court, under its direction, shall openly draw out of the box in which they were deposited, so many of the ballots containing the names of the petit jurors returned, one after another, as shall be sufficient to form a jury.

Persons
first drawn
to be jury.

SEC. 31. The first twelve persons who shall appear as their names are drawn and called, and shall be approved as impartial between the parties, shall be sworn, and shall be the jury to try the cause.

Names drawn
deposited in
another box.

SEC. 32. The ballots containing the names of the jurors so sworn, shall then be deposited in another box, and there kept apart from the ballots containing the names of the other jurors until such jury be discharged.

When
returned
to first box.

SEC. 33. After such jury shall have been discharged, the ballots containing their names shall be again rolled or folded up in the same manner as hereinbefore directed, and shall be returned to the box from which they were first taken; and the same course shall be pursued, as often as any issue shall be brought on to be tried.

When jury
drawn from
names re-
maining
in box.

SEC. 34. If any issue shall be brought on to be tried, while there shall be a jury impaneled in another cause in the same court, and not then discharged, the court may order a jury to be drawn in the manner above directed, out of the box containing the ballots then undrawn; but in all other cases the ballots containing all the names of jurors returned, and appearing at such court, and not discharged or excused from serving, shall be placed together in the same box, before any jury shall be drawn therefrom.

Jury of by-
standers, etc.

SEC. 35. If by reason of there being one or more juries impaneled, or for any other reason, there shall not remain any ballots undrawn, or if in consequence of jurors being set aside, no jury can be obtained from the list of those returned by the sheriff, for the trial of any issue, the court may, as in other cases, order the sheriff, or if he be a party or interested in the cause, some other person to be appointed by the court, to summon jurors from the bystanders, or other persons, who shall be returned and sworn as hereinbefore directed, and shall be a competent jury for the trial of such issue, notwithstanding there may be none of the panel of jurors re-

turned by the sheriff upon such jury: *Provided*, That the court may, in its discretion, instead of drawing talesmen from the bystanders, or others, order that such number of jurors as he may deem necessary be drawn, in accordance with law, from the regular lists of jurors.

Proviso, additional jurors.

SEC. 36. Before any jury shall be drawn, the box containing the ballots of the names of the jurors shall be closed, and shall be well shaken, so as to intermingle such ballots; and the clerk shall draw such ballots without seeing the names written on them, through a hole in the top or lid of such box, so large only as conveniently to admit his hand.

Ballots to be shaken before drawing.

How drawn.

SEC. 37. If any juror be absent at the time his name is drawn, or be set aside, or excused from serving on the trial of any issue, the ballot containing his name shall be rolled up or folded again, in the same manner as before, and returned to the box containing the undrawn ballots, so soon as the jury shall be sworn to try such cause.

Absence, excuse, etc., of juror drawn.

SEC. 38. In any judicial circuit in this State wherein more than one judge is trying jury cases at the same time, it shall be lawful to impanel a jury in one room from jurors drawn in the usual manner by a judge in charge of a case in another room where a jury may at the same time be in the process of being impaneled, and the different courts are authorized to make appropriate rules to properly guide and govern this practice.

Where more than one judge is trying cases.

SEC. 39. In all cases where an issue of facts is tried before any court of record, the court shall at the request in writing, of the counsel of either party, instruct the jury if they return a general verdict, also to find upon particular questions of facts, respecting which the issue is joined, to be stated in writing, and shall direct a written finding thereon: *Provided*, Such special questions shall not exceed five in number, and shall be each in single, short sentences, readily answered by yes or no. The special verdict, or finding, shall be filed with the clerk, and entered upon the minutes, and when any special finding of fact shall be inconsistent with a general verdict, the former shall control the latter, and the court give judgment accordingly.

Findings upon particular questions.

Proviso, number and kind of questions.

Special finding to control.

SEC. 40. In all civil cases each party may challenge peremptorily four jurors; but in all cases of challenges for cause, such cause shall be immediately assigned, and the truth thereof shall be determined by the court.

Challenges.

SEC. 41. No juror shall be questioned for any verdict rendered by him, nor shall he be subject to any action, civil or criminal, on account of such verdict, except to indictment for corrupt conduct in rendering such verdict, in the cases prescribed by law.

No juror questioned for verdict, etc.

SEC. 42. It shall be a good cause of challenge to any juror, in any court of record in this State, in addition to the other causes of challenge allowed by law, that such person has served as a juror upon the regular panel, or as talesman in such court at any time within one year previous to such challenge.

Service as juror within one year.

Special Juries.

Struck juries. SEC. 43. When it shall appear to the circuit court that a fair and impartial trial will be more likely to be obtained in any cause pending therein, by having a struck jury, such court shall order a special jury to be struck for the trial of such cause.

Notice of striking jury. SEC. 44. The party obtaining such order, shall give notice eight days previously, of the time when he will attend before the clerk of the county in which the venue in such action is laid, for the purpose of having such jury struck.

How struck. SEC. 45. At the time appointed the clerk of the county shall attend at his office, with the original lists of grand and petit jurors returned to him who are then liable to serve, and in the presence of the parties or their counsel, shall proceed to strike a jury as follows:

1. The clerk shall select from such list the names of forty-eight persons, whom he shall deem most indifferent between the parties, and best qualified to try the cause;

2. The party on whose application such struck jury was ordered, or his attorney shall then first strike out one of said names, and the opposite party or his agent or attorney, shall strike out another of such names, and so alternately until each party shall have stricken out twelve names:

3. If either party shall fail to attend at the time and place of striking such persons, or shall neglect to strike out any names according to the foregoing provisions, the clerk shall strike out such names for such party;

4. The clerk shall thereupon make out a list of the names of the twenty-four persons not stricken out, and certify the same to be the persons drawn to serve as jurors, pursuant to the order of the court, and shall deliver such list, so certified, to the sheriff of the county.

Sheriff to summon persons named. SEC. 46. The sheriff shall summon the persons whose names are contained on the list so delivered to him by the clerk, in the same manner as other jurors are required to be summoned, and shall return the names of those summoned to the court, at which they are required to appear as jurors.

Jury, how formed. SEC. 47. A jury shall be formed in the manner directed by law in respect to other juries, from the persons so summoned and appearing, who shall try the cause in which such struck jury shall have been ordered; but the court shall have the same power to excuse or discharge any such juror, as in other cases.

When clerk interested in cause, etc. SEC. 48. If it shall appear to the court to which any application for a struck jury shall be made, that the clerk of the county is interested in the cause, or related to either of the parties, or not indifferent between them, such court shall appoint two proper persons to strike such jury; and the persons so appointed shall have the same powers herein conferred upon the clerk, in relation to the striking, certifying and delivering to the sheriff the names of the persons struck as jurors,

and the sheriff shall in like manner summon the persons so selected.

SEC. 49. The expense of striking a jury shall be paid by the party applying for the same, and shall not be taxed in the costs of the suit, and the struck jurors shall be paid as in other cases. Expense.

General Provisions Relating to Jury Trials.

SEC. 50. When any court of record in which an issue of fact is tried by a jury, shall deem it necessary that the jury view the place or premises in question, or any property or thing relating to the issue between the parties, such court may, on the application of either party, and the advancement of a sufficient sum to pay the expenses of the jury and officers attending them, in taking such view, order such view to be had, and direct the manner of effecting the same. View of premises, etc.
Expenses.

SEC. 51. The expenses advanced by any party pursuant to the provisions of the preceding section, shall be taxed like other disbursements in the suit, if the party advancing them shall prevail therein, and be entitled to costs. Expenses taxed as costs.

SEC. 52. Whenever at the close of any term of any circuit court of this State, the trial of a cause shall be in progress, such trial shall continue until the same is determined, and the trial shall not be construed as prolonging said term, nor to prevent the commencement of the succeeding term. Trial at close of term.

SEC. 53. When any jury shall be empaneled to try any issue, to make any inquiry, or to assess any damages, if they cannot agree after being kept together for such time as shall be deemed reasonable by the court or officer before whom they shall have appeared and been empaneled, such court or officer may discharge them, and issue a precept for a new jury, or order another jury to be drawn, as the case may require; and the same proceedings shall be had before such new jury as might have been had before the jury so discharged. Disagreement of jury.

SEC. 54. If any person drawn or summoned as a juror, shall take anything to give his verdict, or shall receive any gift or gratuity whatever, from any party to a suit, for the trial of which such person shall be drawn or summoned, in addition to any criminal punishment to which he may be subject by law, he shall be liable to the party aggrieved thereby in ten times the amount or value of the thing which he has taken or received, in addition to the actual damages sustained thereby. Bribery of juror.
Penalty and liability.

SEC. 55. Every embracer who shall procure a person drawn or summoned as a juror, to take gain or profit contrary to the provisions of the preceding section, shall be liable in ten times the amount or value of the thing so taken, in addition to the actual damages sustained thereby. Embracery.
Liability.

SEC. 56. Upon the trial of any case in any of the circuit courts in this State the defendant, upon the conclusion of the plaintiff's testimony, may request the court to direct the jury Demurrer to evidence, etc.

Exception and defense.	to bring in a verdict for the defendant, or make demurrer to the evidence, without resting his case absolutely.
Instructions to jury.	SEC. 57. Upon the refusal of the court to grant such motion, the defendant shall have the benefit of an exception, as in ordinary cases, and without waiving such exception may then introduce testimony and make his defense upon the merits.
How given.	SEC. 58. Hereafter in all jury trials in courts of record, in charging or instructing juries, the court shall instruct them only as to the law of the case; and such instructions may be given by the court of its own motion, and shall be taken in full by the court stenographer, or in case there be no stenographer, shall be in writing and filed in the case.
Requests for instructions.	SEC. 59. After the evidence is concluded, and before the case is argued or submitted to the jury, either party may present written requests for instructions on any point of law arising in the cause, and upon such written requests so presented, an argument may be made by counsel for the respective parties previous to the court passing thereon. Any request not substantially covered by the charge as given, shall be deemed to be refused.
Deemed refused.	

Formal Exceptions not Necessary.

Exception to follow objection.	SEC. 60. It shall not be necessary in the trial of any action or proceeding in any court of record, to except to any ruling or action of the court, if an objection thereto was duly made, but an exception shall be deemed to follow as a matter of course, and it shall not be necessary to except in any case to the charge of the court to the jury, or to the refusal of the court to charge as requested; but any party considering himself aggrieved by any such ruling, action, charge or refusal to charge, may assign errors the same as if exception had been made according to the practice heretofore in use.
Unnecessary to except to charge, etc.	

Of Bills of Exceptions.

Bill of exceptions, how made.	SEC. 61. Either party desiring a review of the questions of law appearing upon the trial, may, within such time as shall be prescribed by statute or the rules of court, make a bill of exceptions, in the same manner and with the same effect as upon a trial by jury, or a case containing so much of the evidence as may be material to the question to be raised.
Time to settle.	SEC. 62. The court or the circuit judge at chambers may allow such time as shall be deemed reasonable to settle such exceptions and reduce the same to form: <i>Provided</i> , That no more than twenty days shall be allowed for such purpose, except upon the production of a certificate from the stenographer of said circuit stating that the party desiring such extension has ordered a transcript of the testimony necessary for the preparation of said bill of exceptions, and that the same will be furnished as soon as possible by said stenographer. If a motion for a new trial is made within said
Proviso, transcript of testimony.	
Extension time.	

twenty days, and such motion be denied the time to settle a bill of exceptions may be extended twenty days from the date of such denial without the production of such certificate.

SEC. 63. In all cases hereafter taken to the supreme court on writ of error or appeal, where a motion for a new trial has been previously refused by the trial judge, the party appealing the same may incorporate in the bill of exceptions a record of all proceedings had on said motion for a new trial, including the reasons given by the trial judge in refusing to grant said new trial. Exceptions may be taken and error assigned on the decision of the circuit judge in refusing such motion, and the same shall be reviewed by the supreme court.

Incorporation of proceedings on motion for new trial.

Exceptions.

SEC. 64. If the truth of the case be fairly stated in such exceptions, it shall be the duty of the judge holding such court to sign such statement, and he may be compelled to do so by the court to which any writ of error may by law be brought, upon the judgment rendered in such cause, or which shall have authority to decide on such exceptions when returned by him. And in case of the death, resignation, expiration of the term of office, or vacancy in office from any other cause, of the judge before whom the cause was tried, when there shall be an official stenographer of such court who has taken full minutes of the testimony, exceptions and charges of the judge at such trial, such minutes shall be prima facie evidence of the testimony given, exceptions taken, and the charge of the court, and other proceedings on such trial, and such exceptions may be settled and signed by the successor in office of such judge, or by any judge authorized in such cases to perform the general duties of the judge of such court.

Duty of judge to sign.

Death, resignation, etc., of judge.

SEC. 65. If a bill of exceptions be signed in a cause it shall not prevent the argument of a motion to set aside the verdict in such cause, on the ground that such verdict was against evidence; but such motion shall be argued, either before or after the decision of the court on the bill of exceptions, as the court shall direct.

Motion to set aside verdict.

SEC. 66. If such bill of exceptions be taken in any case pending in any circuit court, it shall be filed with the clerk of such court, who shall return the same, together with the record and other proceedings, in any cause which shall be removed by writ of error, or otherwise.

Filing and return of bill.

Of Referees.

SEC. 67. Issues joined in any civil action at law, whether of fact or of law, may, upon the written consent of the parties, be referred to such person or such three persons as may be agreed upon by the parties, or appointed by the court in case the parties fail to agree.

Reference upon consent of parties.

SEC. 68. When the parties do not consent, the court may, upon the motion of either, or upon its own motion, direct a like reference in either of the following cases:

Reference upon motion.

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parties, or their attorneys, in the manner provided by law for the service of notices in the circuit court, and immediately upon said report, under his hand, his certificate of the date of such notice, and the time when the same was given, such certificate shall have the same effect as evidence as the service of an original writ by a sheriff; and either party, within ten days after receiving such notice, may file with the clerk exceptions in writing to any conclusion of law in the report, and shall serve a copy of such exceptions on the other party, and exceptions being filed and served as aforesaid, the case may be noticed for argument before the court, and such exceptions, on any day in term, on same notice as for the filing of such exceptions, shall be the prerequisite for special motions; but it shall not be necessary for the parties to file exceptions to the report, in order to obtain a review of any ruling of the referees embodied in a bill of exceptions, settled as provided by the next section.

Exceptions to conclusions of law.

Argument before court.

SEC. 72. Either party, on the hearing before the referees, shall be entitled to take exceptions to any ruling of the referees, in the same manner as on trial in open court; and in case exceptions are so taken, the parties respectively shall be notified by the referees of the time and place when and where they will meet to complete their report, at which time they shall be informed of the conclusions of the referees; and the parties so excepting, may then, or previous to such time as the referees shall then adjourn to, prepare a bill of exceptions, which shall be settled by the referees on such adjourned day, and shall then be annexed to and filed with their report, and a review thereof may be had in the same manner as of exceptions to the report.

Exceptions on hearing before referees.

Settlement of bill of exceptions.

SEC. 73. On the hearing of such bills of exceptions, or upon exceptions to the report, or both, the circuit court may confirm or set aside such report, in whole or in part, and in its discretion refer the case back to the referees, or enter judgment thereon; and in case that judgment shall be entered thereon, error may be brought on such judgment as in other cases, in which case the bill of exceptions, if any, the report and the exceptions to the report, shall be considered as forming a part of the record in the case, and the finding of facts by the referees shall be treated as a special verdict.

Action of court.

Finding of fact treated as special verdict.

SEC. 74. The referees shall be entitled to call the parties as witnesses in the case on which the court might call them, if the hearing were in open court; and in all cases where motions are referred, the referees shall be entitled, at their option, to call and examine the parties and their witnesses personally, instead of hearing the motion on affidavits; and commissions may be obtained for the taking of testimony to be used on hearings before referees, in the same manner as on trials in open court.

Referees may call parties as witnesses.

May examine witnesses personally.

SEC. 75. The referees shall be allowed such compensation for their services as the court may deem just, which shall be taxed as a part of the costs in the cause, or the parties and

1. When the trial of an issue of fact shall require the examination of mutual accounts, or of a long account on one side only, or where the taking of an account shall be necessary for the information of the court before judgment; but no such case shall be referred if either party shall, within ten days after the joining issue, file with the clerk a written demand for a trial by jury;

2. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, either before or after the judgment; and the circuit judge, in vacation, may, by an order under his hand, direct such a reference on the written application of either party, which application, with notice of the time and place, within the county where the cause is pending, when and where the same will be presented, shall be served on the opposite party or his attorney, for such length of time before presentation as shall be required by the rules of the circuit courts for notices of special motions.

How trial
conducted.

Failure of
witness to
attend or
refusal to
testify.

Decision of
majority.

Powers
of judge.

Report.

Notice of
filing of
report.

SEC. 69. The trial by such referees shall be conducted in the same manner as a trial by the court; they shall have the same power to administer oaths, to issue process to compel the attendance of witnesses, to grant continuances, to preserve order, and to punish all violations thereof, and if any witness shall fail to attend before such referee or referees, after being duly summoned or subpoenaed, according to the practice of the court, or being present, shall refuse to be sworn or to testify, such referee or referees, if in term time, may certify the facts to the court, or if in vacation, to any judge of the circuit court at chambers, and such court or judge may thereupon, if the facts certified shall appear to warrant it, punish such witness as for a contempt of court, in the same manner as the court could do if the witness had committed such contempt before such court. When more than one is appointed, they must all meet to hear proofs, arguments, and to deliberate; but a decision of the majority shall be regarded as their decision. The circuit judge may, by an order under his hand, filed with the clerk, discharge any referee on cause shown by affidavit, and may, in like manner, fill any vacancy that may occur in their number, or may direct the reference to proceed and be concluded without filling any such vacancy. He shall, in like manner, have power, on cause shown, to make an order for expediting the proceedings before referees, and to compel a report or the signing of a bill of exceptions.

SEC. 70. The referees shall report to the court in writing, showing therein the facts found, and the conclusions of law separately; and such report may be filed in term time or in vacation, and shall stand as the finding of the court in term time, unless excepted to, and judgment may be entered thereon in the same manner as if the action had been tried by the court.

SEC. 71. When the referees shall file their report the clerk shall, without delay, give notice thereof, in writing, to the

respective parties, or their attorneys, in the manner provided for the service of notices in the circuit court, and immediately indorse on said report, under his hand, his certificate of the giving of such notice, and the time when the same was given, which certificate shall have the same effect as evidence as the return of service of an original writ by a sheriff; and either party, within ten days after receiving such notice, may file with the clerk exceptions in writing to any conclusion of law in such report, and shall serve a copy of such exceptions on the opposite party, and exceptions being filed and served as aforesaid, the case may be noticed for argument before the court, on such exceptions, on any day in term, on same notice as shall be requisite for special motions; but it shall not be necessary for the parties to file exceptions to the report, in order to obtain a review of any ruling of the referees embodied in a bill of exceptions, settled as provided by the next section.

Exceptions
to con-
clusions
of law.

Argument
before court.

SEC. 72. Either party, on the hearing before the referees, shall be entitled to take exceptions to any ruling of the referees, in the same manner as on trial in open court; and in case exceptions are so taken, the parties respectively shall be notified by the referees of the time and place when and where they will meet to complete their report, at which time they shall be informed of the conclusions of the referees; and the parties so excepting, may then, or previous to such time as the referees shall then adjourn to, prepare a bill of exceptions, which shall be settled by the referees on such adjourned day, and shall then be annexed to and filed with their report, and a review thereof may be had in the same manner as of exceptions to the report.

Exceptions on
hearing before
referees.

Settlement
of bill of
exceptions.

SEC. 73. On the hearing of such bills of exceptions, or upon exceptions to the report, or both, the circuit court may confirm or set aside such report, in whole or in part, and in its discretion refer the case back to the referees, or enter judgment thereon; and in case that judgment shall be entered thereon, error may be brought on such judgment as in other cases, in which case the bill of exceptions, if any, the report and the exceptions to the report, shall be considered as forming a part of the record in the case, and the finding of facts by the referees shall be treated as a special verdict.

Action
of court.

Finding of
fact treated
as special
verdict.

SEC. 74. The referees shall be entitled to call the parties as witnesses in the case on which the court might call them, if the hearing were in open court; and in all cases where motions are referred, the referees shall be entitled, at their option, to call and examine the parties and their witnesses personally, instead of hearing the motion on affidavits; and commissions may be obtained for the taking of testimony to be used on hearings before referees, in the same manner as on trials in open court.

Referees may
call parties as
witnesses.

May examine
witnesses
personally.

SEC. 75. The referees shall be allowed such compensation for their services as the court may deem just, which shall be taxed as a part of the costs in the cause, or the parties and

Compensation.

Proviso, day's work.	<p>the referees, by stipulations to be annexed to the report, may agree on the rate of compensation to be made to the referees, and in every case each referee shall attend to, and return with the report, a certificate under his hand, setting forth the time actually expended by him in the business of such reference: <i>Provided</i>, That six hours shall be considered as one day, and three hours one-half day for the purpose of fixing the time employed by any referee upon such reference; and whenever a referee shall fail to report, certify, and return, as aforesaid, the time employed by him in any reference, he shall be deemed to have waived all compensation for his services as such referee: And <i>Provided further</i>, That whenever a stipulation in writing, as aforesaid, shall be made between the parties and the referees, fixing the compensation, such stipulation shall be attached to, and returned with the report, and the court shall allow the compensation so fixed, and no other.</p>
Further proviso, stipulation as to pay.	<p>SEC. 76. Whenever a cause is at issue, and it shall appear that the trial will require the investigation of accounts, or the examination of vouchers the court in which such issue is to be tried, may appoint one or more auditors to hear the parties, and examine their vouchers and evidence, and to state the account and make report thereof to such court.</p>
Auditors, appointment of.	<p>SEC. 77. Before proceeding to hear any evidence in the cause, the auditors shall be severally sworn, in the same manner as referees are herein required to be sworn, and they shall in like manner give notice to the parties of the time and place appointed for their meeting, and they may adjourn from time to time, as may be necessary.</p>
Auditors to be sworn.	<p>SEC. 78. All the auditors must meet and hear the cause, but a report of a majority of them shall be valid, and such report may be compelled by the court in like manner as in the case of referees.</p>
Meetings.	<p>SEC. 79. Witnesses may be summoned and compelled to attend and testify before the auditors, in the same manner as before referees; and either of the auditors may administer the necessary oath to such witnesses.</p>
Report of majority.	<p>SEC. 80. The court may, for any sufficient reason, discharge the auditors and appoint others, and they may also re-commit the report for revision or further examination to the same, or to other auditors.</p>
Witnesses before auditors.	<p>SEC. 81. The report of the auditors, if there be no legal objection to it, may be used by either party as evidence on the trial before the jury, but it may be impeached and disproved by other evidence produced on the trial by either party.</p>
Court's power over auditors.	<p>SEC. 82. The court shall award a reasonable compensation to the auditors or referees, as the case may be, which shall be paid by the plaintiff, and shall be taxed in his bill of costs, if he shall be entitled to costs in the suit.</p>
Use of report as evidence.	
Compensation.	

CHAPTER XIX.

Practice in Chancery Cases not Otherwise Provided for.

SECTION 1. Whenever a bill shall be filed in chancery, for relief, or for the benefit of the creditors generally of any person, or of any estate, or for the benefit of any other persons than the plaintiffs, who will come in and contribute to the expense of such suit, every order which may be made thereon requiring such creditors or other persons to exhibit their demands shall in all cases be published once in each week, for at least three weeks, and as much longer as the court may direct, in any newspaper which the court may designate.

Publication
of order for
creditors
to exhibit
demands.

SEC. 2. In any case where personal service was not had, except in a case of divorce, if the defendant against whom any decree shall have been made, or his representatives, shall afterward appear and petition to be heard, the party so petitioning shall be admitted to answer the plaintiff's bill upon paying or securing to be paid such costs as the court shall adjudge, and the suit shall then proceed in like manner as if such defendant had appeared in due season and no decree had been made.

Appearance
of defendant
not personally
served.

SEC. 3. The defendant, or his representatives, must so appear within one year after notice in writing of the decree shall have been given to him or them, and within seven years after the making of the decree, when such notice shall not be given.

Time for
appearance.

SEC. 4. If the defendant or his representatives shall not so appear within one year after such notice shall have been given, and if not given, before the expiration of seven years after the making of the decree, the court shall then, by order, confirm the decree against the defendant, and against all persons claiming under him by virtue of any act subsequent to the commencement of the suit, and may make such further order in the premises as shall be just and reasonable.

Confirmation
of decree, upon
non-appear-
ance.

SEC. 5. If the bill shall have been filed to procure the foreclosure or satisfaction of a mortgage, the court, instead of proceeding to a sequestration, may decree a sale of the mortgaged premises, or of such part thereof as may be necessary to discharge the mortgage, and the costs of suit, as in other cases.

Sale of
mortgaged
premises.

SEC. 6. In the case mentioned in the last preceding section if the defendant, at any time before the sale of the mortgaged premises, shall appear and pay to the plaintiff such costs as the court shall award, the court shall stay the sale, and the same proceedings shall be thereafter had, as if the defendant had been served with process, and had regularly appeared.

Stay of sale.

SEC. 7. No sale and conveyance regularly made under the preceding provisions, upon a bill for the foreclosure and satisfaction of a mortgage, shall be affected or prejudiced by the appearance of the defendant within one year, or the seven

Sale, when not
affected by
appearance.

Bill to
account.

years hereinbefore specified, nor by any other proceeding; but such defendant or his representatives may, at any time within seven years after the decree ordering such sale, file a bill against the plaintiff or his representatives, to account for all moneys received by him or them by virtue of such decree, over and above the amount justly due on the mortgage, and costs of suit; and the court shall proceed on such bill, according to the equity of the case.

Of Injunctions.

Injunction
to stay trial.

Bond.

SEC. 8. No injunction shall issue to stay the trial of any personal action in a court of law, until the party applying therefor shall execute a bond with one or more sufficient sureties, to the plaintiff in such action at law, in such sum as the circuit judge or other officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff, or his legal representatives, of all moneys which may be recovered by such plaintiff, or his representatives, or the collection of which may be stayed by such injunction, in such action at law, for debt or damages, and for costs therein; and also for the payment of such costs as may be awarded to them in the court in chancery, in the suit in which such injunction shall issue.

Stay of
proceedings
after verdict,
and before
judgment.

SEC. 9. No injunction shall issue to stay proceedings at law in any personal action, after verdict, and before judgment thereon, unless a sum of money equal to the amount for which the verdict was given, shall be first deposited with the court from which the injunction issues, by the party applying for such injunction, or a bond for the payment thereof shall be given as hereinafter directed.

Stay of
proceedings
after judgment.

Deposit
of money.

Bond.

SEC. 10. No injunction shall issue to stay proceedings at law in any personal action, after judgment, unless:

1. A sum of money equal to the full amount of such judgment, including costs shall be first deposited by the party applying for such injunction, or a bond in lieu thereof be given as hereinafter directed; and

2. Unless such party, in addition to such deposit or bond in lieu thereof, shall also execute a bond with one or more sufficient sureties, to the plaintiff in such judgment, in such sum as the circuit judge or officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff, or his legal representatives, of all such damages, and costs, as may be awarded to them by the court, at the final hearing of the cause.

Payment of
deposit to
plaintiff.

SEC. 11. If, after a verdict or judgment at law, any moneys shall be deposited in the court pursuant to either of the two last sections, the same may be paid, on the order of the court, to the plaintiff in such action at law, upon his executing to the people of this State a bond, in a penalty double the amount so deposited, with such sureties as the court shall approve, conditioned that such plaintiff will pay to the clerk with whom the bill shall be filed, the moneys which he shall

so receive, and the interest thereon, or any part thereof, according to any order or decree of the court, that may be made in relation to the same.

SEC. 12. Whenever the moneys so deposited shall be paid to the plaintiff in the action at law, if the final decision of the cause in chancery shall be against the party obtaining the injunction, the circuit judge may order the bond that shall have been given to be canceled, and shall continue the injunction to stay the proceedings at law, or shall compel the plaintiff therein to cause such judgment to be satisfied and discharged of record.

Proceedings
after final
decision
of cause.

SEC. 13. No injunction shall issue to stay proceedings at law, in any action for the recovery of lands, or of the possession thereof, after verdict, unless the party applying therefor shall execute a bond, with one or more sureties, to the plaintiff in such action at law, in such sum as the circuit judge or officer allowing the injunction shall direct, conditioned for the payment to the plaintiff in such action, and his legal representatives, of all such damages and costs as may be awarded to them, in case of a decision against the party obtaining such injunction.

Stay of
proceedings,
after verdict,
for recovery
of lands.
Bond.

SEC. 14. The damages to be paid upon the dissolution of such injunction, shall be ascertained by reference to a circuit court commissioner, or in such manner as the courts shall direct, and shall include not only the reasonable rents and profits of the lands recovered by such verdict, but all waste committed thereon after the granting of the injunction.

Damages, how
ascertained.

SEC. 15. The circuit judge shall have power to dispense with any deposit of moneys required by either of the preceding sections, and in lieu thereof to direct the execution of a bond, with sureties, conditioned to pay the amount so required to be deposited, whenever ordered by the court; or, if a bond is already required in addition to such deposit, then to direct the enlargement of a penalty and condition of such bond as may be requisite; but whenever such deposit shall be dispensed with, the bond so substituted or enlarged, shall be executed by at least two sufficient sureties.

Bond instead
of deposit, etc.

SEC. 16. Whenever an injunction shall be applied for, to stay proceedings at law in an action after judgment or verdict, on the ground that such judgment or verdict was obtained by actual fraud, the circuit judge or officer granting the injunction shall have power to dispense with the deposit of any moneys, or the execution of any bond.

When deposit
or bond
dispensed
with.

SEC. 17. The sufficiency of the sureties in any bond executed under the provisions of this chapter, relating to staying proceedings at law by injunction, shall be ascertained, either:

Sufficiency of
sureties, how
ascertained.

1. By the certificate of any circuit court commissioner of the proper county, stating that he has inquired into the circumstances of such sureties, and is satisfied of their sufficiency; or

2. By the affidavit of such surety, stating that he is a

Bond,
where filed.

householder, resident within this State, and that he is worth a sum equal to the amount in which the bond shall have been required, over and above all debts and demands against him.

SEC. 18. Whenever a bond shall be required to be executed, as aforesaid, prior to the issuing of an injunction, the same, with the certificate or affidavit above required, shall be filed with the clerk, before the sealing and delivery of the injunction.

Delivery of
bond for
prosecution.

SEC. 19. The circuit judge shall direct the delivery of any such bond to the person entitled to the benefit thereof, for prosecution, whenever the condition of such bond shall be broken, or the circumstances of the case shall require such delivery.

Who may
grant in-
junctions.

SEC. 20. Circuit judges, and each circuit court commissioner, except as provided in section one hundred two of chapter two of this act, shall have power to grant injunctions to stay proceedings at law.

Sickness, etc.,
of judge.

SEC. 21. In case the circuit judge of any circuit, and the other officers of any county authorized to grant injunctions, are absent, sick, or in any manner disqualified from ordering or allowing an injunction in any case pending or about to be commenced in such circuit or county, upon due proofs of such facts by affidavit, the circuit judge of any judicial district adjoining the judicial district in which said circuit or county is situated, shall have authority at chambers or at any place where he may be, to grant or deny such injunction the same as if he were the circuit judge of the circuit in which such suit is pending or about to be commenced, and after such injunction is allowed, as aforesaid, the judge ordering the same shall have concurrent jurisdiction to modify or dissolve the same with the presiding judge of the circuit wherein such suit is pending.

Of the Foreclosure of Mortgages.

Bills for
foreclosure,
where filed.

SEC. 22. All bills for the foreclosure or satisfaction of mortgages shall be filed in the circuit court in chancery of the county where the mortgaged premises, or any part thereof, are situated.

Sale of
premises.

SEC. 23. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the costs of suit; but the circuit judge shall not, by such decree, order any lands to be sold within six months after the filing of the bill of foreclosure: *Provided*, That if the mortgagor, his heirs, executors, administrators or any person lawfully claiming from or under him or them shall, within six months from the time of such sale, redeem the entire premises sold, by paying to the purchaser, his executors, administrators or assigns, or to the register of deeds in whose office such deed is deposited as provided by section thirty, for the benefit of such purchaser, the sum which was bid

Proviso,
redemption.

therefor, with interest from the time of the sale at the rate per cent borne by the mortgage, not exceeding eight per cent per annum, and in case such payment is made to the register of deeds, the sum of one dollar as a fee for the care and custody of such redemption money, then such deed shall be void and of no effect, but in case any distinct lot or parcel separately sold shall be redeemed, leaving a portion of the premises unredeemed, then such deed shall be inoperative merely to the parcel or parcels so redeemed, and to those portions not so redeemed shall remain valid and of full effect.

SEC. 24. In foreclosure cases in the original decree therein, the court shall determine and decree as to which defendants, if any, are personally liable for the mortgaged debt, and it shall be provided in such decree that upon the coming in and confirmation of the commissioner's report of sale, if there be any part of the money decreed to be due, either of the principal or interest of the debt, or of the costs decreed to be paid, left unpaid after applying the amount received by the commissioner, upon the sale of the premises, the clerk of the court shall, upon the application of the attorney for the plaintiff, and without notice to defendant or his attorney, issue execution for the amount of such deficiency. The court shall also have power to decree and compel the delivery of the possession of the premises to the purchaser at said sale.

Decree,
what to
determine.

Execution for
deficiency.

Delivery of
possession.

SEC. 25. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

No proceed-
ings at law.

SEC. 26. If the mortgaged debt be secured by the obligation or other evidence of debt of any other person besides the mortgagor, the plaintiff may make such person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

Other person
as party.

SEC. 27. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the plaintiff shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected or paid.

What bill
to foreclose
to state.

SEC. 28. If it appear that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff or other proper officer shall have returned that the execution is unsatisfied, in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

Unsatisfied
execution.

SEC. 29. All sales of mortgaged premises, under a decree in chancery, shall be made by a circuit court commissioner of the county in which the decree was rendered, or the land or some

Sales of
mortgaged
premises.

part thereof is situated, or by some other person duly authorized by the order of the court; and such sales shall be at public vendue between the hour of nine o'clock in the morning and the setting of the sun, at the court house, or place of holding the circuit court in the county in which such estate or some part thereof is situated, or at such other place as the court shall direct.

At public vendue.

Execution of deed. SEC. 30. Deeds shall thereupon be executed by such circuit court commissioner or other person making such sale specifying the names of the parties in the suit, the date of the mortgage, when and where recorded, with a description of the premises sold, and the amount for which each parcel of land therein described was sold, and he shall endorse upon each deed the time when the same will become operative in case the premises are not redeemed according to law; such deed or deeds shall as soon as practicable, and within twenty days after such sale be deposited with the register of deeds of the county in which the land therein described is situated, and the register shall endorse thereon the time the same was received; and for the better preservation thereof, shall record the same at length in a book to be provided in his office for that purpose and shall index the same in the regular index of deeds, and the fee for recording the same shall be included among the other costs and expenses allowed by law. In case such premises or any parcel thereof shall be redeemed the register of deeds shall write on the face of such record the word "redeemed," stating at what date such entry is made and signing such entry with his official signature. Unless the premises described in such deed or any parcel thereof shall be redeemed within the time limited for such redemption as herein provided, such deed shall thereupon as to all parcels not so redeemed become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter.

Deposit of deed with register.

Duty of register.

Redemption.

When deed to become operative.

How proceeds of sale applied.

Surplus, when put at interest.

Bill for foreclosure of installment, etc.

SEC. 31. The proceeds of every sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

SEC. 32. If such surplus or any part thereof, shall remain in the said court for the term of three months without being applied for, the circuit judge may direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of such court.

SEC. 33. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the bill shall be dismissed upon

the defendant's bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

SEC. 34. If, after a decree for sale entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed; but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or installment of the principal, or of any interest thereafter to grow due.

Payment of installment and costs.

SEC. 35. If the defendant shall not bring into court the amount due, with costs, or if, for any other cause, a decree shall pass for the plaintiff, the court may direct a reference to a commissioner to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony; and if it shall appear that the same can be sold in parcels, without injury to the interests of the parties, the decree shall direct so much of the mortgaged premises to be sold, as will be sufficient to pay the amount then due on such mortgage, with costs; and such decree shall remain as security for any subsequent default.

Reference to commissioner to report situation.

Sale in parcels.

SEC. 36. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or installment of the principal or of any interest due upon such mortgage, the court may, upon the petition of the plaintiff, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings may be had, as often as a default shall happen.

Subsequent defaults.

SEC. 37. If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall in the first instance be entered for the sale of the whole premises accordingly.

Sale of whole premises.

SEC. 38. In such case the proceeds of such sale shall be applied as well to the interest, portion or installment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable; or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest, for the benefit of the plaintiff, to be paid to him, as the installments, or portions of the principal, or the interest, may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

Application of proceeds.

Proceedings Relating to Conveyance of Lands of Infants and Incompetents, etc.

Court of
chancery
may order
conveyance
of lands,
etc., by.

SEC. 39. Whenever any infant, idiot, lunatic, or other incompetent person shall be seized or possessed of any lands, tenements, or hereditaments, by way of mortgage, or in trust only for others, the court of chancery for the county where such property is situated, or in which such infant, idiot, lunatic, or other incompetent person may be, on the petition of the guardian of such infant, idiot, lunatic, or other incompetent person, or on the application by bill or petition of any person in any way interested, may order and compel such infant, idiot, lunatic, or other incompetent person to convey and assure such lands, tenements and hereditaments to any other person, in such manner as the said court shall direct.

Conveyance
effectual
in law.

SEC. 40. Every conveyance or assurance, made pursuant to such order, shall be as good and effectual in law as if the same were made by such infant, idiot, lunatic, or other incompetent person, when of lawful age and of sound mind.

Sale or
disposition of
real estate.

SEC. 41. Any infant, idiot, lunatic, or other incompetent person, seized of any real estate, or of any interest therein, either in fee or as tenant for life or years, may apply to the circuit court in chancery for the county where the property may be situated, if the infant, idiot, lunatic, or other incompetent be not a resident of this State, and if a resident of this State, then to the circuit court in chancery of the county in which he may be a resident, or in which the property may be situated, for the sale or disposition of such property, in the manner hereinafter directed. If the applicant has a guardian, then the application shall be made by such guardian, and if he has no guardian, or the guardian is a non-resident, application may be made by a next friend, who may be authorized to act as such by said court. Such next friend shall be appointed in accordance with the provisions of sections twenty-eight and twenty-nine of chapter twelve of this act, relating to the appointment of next friends for infants and persons insane, or otherwise mentally incompetent.

Application,
how made.

Appointment
of guardian,
if necessary.

SEC. 42. On such application the court shall, if necessary, appoint one or more suitable persons to be guardians of such infant, idiot, lunatic, or other incompetent person, in relation to the proceedings on such application.

Bond of
guardian.

SEC. 43. The guardian shall give bond to such infant, idiot, lunatic, or other incompetent person, to be filed with the clerk, in such penalty, with such sureties, and in such form as the court shall direct, conditioned for the faithful performance of the trust reposed; for the paying over, investing and accounting for all moneys that shall be received by such guardian according to the order of any court having authority to give directions in the premises, and for the observance of the orders of the court in relation to the said trust.

Prosecution
of bond.

SEC. 44. If such bond be forfeited, the court shall direct it to be prosecuted for the benefit of the party injured.

SEC. 45. Upon the filing of such bond, the court may proceed in a summary manner, on oral or other testimony, or by reference to a circuit court commissioner to inquire into the merits of such application. Inquiry into merits.

SEC. 46. Whenever it shall appear satisfactorily that a disposition of any part of the real estate of such infant, idiot, lunatic, or other incompetent person, or of his interest in any term of years, is necessary and proper, either for the support and maintenance of such infant, idiot, lunatic or other incompetent person, or for his education, or that the interest of such infant, idiot, lunatic or other incompetent person requires or will be substantially promoted by such disposition, on account of any part of his said property being exposed to waste or dilapidation, or on account of its being wholly unproductive, or for any other peculiar reasons or circumstances, the court may order the letting for a term of years, the sale, exchange or other disposition of such real estate or interest, to be made by the guardians of such infants, idiots, lunatics or other incompetent persons, in such manner and with such restrictions as shall be deemed expedient. Order of court.

SEC. 47. Whenever it shall be made to appear to the court that it will be manifestly for the interest and advantage of any infant, idiot, lunatic or other incompetent person that any incumbrance upon the real estate of such person should be purchased and discharged, in whole or in part, the court may authorize the guardian of such person to purchase and discharge the same, and if necessary, to sell and dispose of such part of the real estate of such person as may be necessary for that purpose: *Provided*, Such purchase and discharge shall in no way be construed as vesting in said guardian any right, title or interest in such premises, to the prejudice of such person. Discharge of incumbrance.

SEC. 48. But no real estate or term for years shall be sold, leased or disposed of in any manner against the provisions of any last will, or of any conveyance, by which such estate or term was devised or granted to such infant, idiot, lunatic, or other incompetent person. How real estate not to be disposed of.

SEC. 49. Upon an agreement for sale, leasing or other disposition of such property, being made in pursuance of such order, the same shall be reported to the court on the oath of the guardian making the same; and if it be confirmed, a lease or conveyance shall be executed under the direction of the court. Report of sale, etc., to court.

SEC. 50. All sales, leases, dispositions and conveyances made in good faith by the guardian in pursuance of such order, when so confirmed, shall be valid and effectual as if made by such infant, idiot, lunatic, or other incompetent person when of lawful age and of sound mind. Sales, etc., valid and effectual.

SEC. 51. From the time of such application to the court, the infant, idiot, lunatic, or other incompetent person shall be considered as a ward of the court so far as relates to such property, its proceeds and income; and the court shall make Incompetent to be ward of court.

orders for the application and disposition of the proceeds of such property and for the investment of the surplus belonging to such infant, idiot, lunatic, or other incompetent person, so as to secure the same for his benefit, and shall direct a return of such investment and disposition to be made on oath, as soon as may be, and shall require accounts to be rendered periodically, by any guardian or other person who may be entrusted with the disposition of the income of such proceeds.

Proceeds of
sale deemed
real estate.

SEC. 52. No sale made as aforesaid of the real estate of any infant, idiot, lunatic, or other incompetent person, shall give to such infant, idiot, lunatic, or other incompetent person, any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold; but the said proceeds shall be deemed real estate of the same nature as the property sold.

Dower,
gross sum
or investment
in lieu of.

SEC. 53. If the real estate of any infant, idiot, lunatic or other incompetent person, or any part of it shall be subject to dower, and the person entitled to such dower shall consent in writing to accept a gross sum in lieu thereof, or the permanent investment of a reasonable sum, in such manner as that the interest thereof be made payable to the person entitled to such dower, during life, the court may direct the payment of such sum in gross or the investment of such sum as shall be deemed reasonable and shall be acceptable to the person entitled to such dower, in manner aforesaid; which sum so paid or invested shall be taken out of the proceeds of the sale of the real estate of such infant, idiot, lunatic, or other incompetent person.

Release of
right of dower.

SEC. 54. Before any such sum shall be paid, or such investment made, the court shall be satisfied that an effectual release of such right of dower has been executed.

Sale of Lands Held by Executors in Trust.

Court of
chancery may
direct sale.

SEC. 55. Whenever any lands, tenements, or hereditaments are held by any executor in trust for others, the court of chancery for the county in which such property is wholly or in part situated may, upon the bill or petition of such executor or any person interested, whenever it shall be made to appear for the best interest of the persons for whom such property is so held in trust, order, direct and authorize the executor to sell, grant and convey such property at public or private sale, and the sale and conveyance made pursuant to such order, when approved by the court, shall be effectual to pass the title to said property to the purchaser thereof.

Proceedings.

SEC. 56. Upon the filing of such bill or petition, the proceedings thereon shall be the same as in ordinary suits in chancery so far as practicable. The court may make such orders as may be necessary therein. Guardians shall be appointed for all infant parties, and no sale shall be made until the executor shall have executed and filed with the clerk of the court a bond in such penalty and with such sureties as

shall be approved by the circuit judge, for the faithful discharge of his duties, and the proper disposition of the proceeds of the sale, as may be ordered by the court.

SEC. 57. The court shall make all proper orders and directions from time to time for the management, investment and disposition of the moneys received from such sale, and the interest and income therefrom.

Orders and directions.

Of Notice Lis Pendens.

SEC. 58. To render the filing of a bill constructive notice to a purchaser of any real estate, it shall be the duty of the plaintiff to file for record, with the register of deeds of the county in which the lands to be affected by such constructive notice are situated, a notice of the pendency of such suit in chancery, setting forth the title of the cause, and the general object thereof, together with a description of the lands to be affected thereby; and it shall thereupon become the duty of the register to record such notice, in a book kept for that purpose, upon the payment of the same fees as is provided by law for recording deeds. A copy of such record, authenticated by the register, shall be evidence of such notice, and the filing of the same, in all courts and places.

Notice to be filed with register of deeds.

What to contain.

SEC. 59. Each register of deeds shall enter in an index to be kept in his office, such references to the said notices, as will enable all persons interested to search his office for such notices without inconvenience.

Index.

SEC. 60. Whenever any suit in chancery, notice of the pendency of which has been filed with any register of deeds, shall be, or shall have been heretofore dismissed, whether by stipulation, the voluntary act of the plaintiff on final hearing, or otherwise, it shall be the duty of the clerk of the court in which such suit shall have been pending, upon request of any party thereto, to execute, under his hand and the seal of said court, a certificate of the fact of such dismissal, or the attorney for the plaintiff in such suit may execute a like certificate, which shall be acknowledged by said attorney before some officer authorized to take the acknowledgment of deeds. The said register of deeds on receipt of either of such certificates, and on payment to him of a fee of twenty-five cents shall file and preserve the same and shall record the same at length in the books provided for the registry of such notices of pendency of suits, and shall mark on the record of such notice discharged by certificate of the clerk of said court, naming it, or the certificate of said attorney, naming him, as the case may be, with the date of filing such certificate, and the book and page of its record, and thereafter the effect of such notice shall cease and determine.

Certificate of dismissal of suit.

Record of same.

Discharge of Mortgages in Certain Cases.

SEC. 61. When a recorded mortgage on lands or property has been paid and satisfied, or when fifteen years have elapsed

Petition for discharge.

since the debt secured by such mortgage became due and payable, or since the last payment made thereon, and no suit or proceedings have been commenced to collect the same, the owner of such land or property may present a petition to the circuit court for the county in which such land or property so incumbered is wholly or in part situated, duly verified by the oath of the petitioner, or by some one in his behalf, which shall state the names of the mortgagor and mortgagee, the date of the mortgage, and the liber and page of the record thereof, the facts in regard to payment of the debt thereby secured, or the non-commencement of such suit or proceeding within said fifteen years; and further, that the present residence or whereabouts of the mortgagee (or his assignee, if the mortgage shall have been assigned), is unknown to the petitioner, and that the petitioner has been unable to ascertain the same after diligent search and inquiry; or, if such be the fact, that the mortgagee or assignee is deceased, and that three months have elapsed since his death, and that the names and residence of the legal representatives, if any there are, of the mortgagee or assignee, are unknown to the petitioner, and that he has been unable to ascertain the same after diligent search and inquiry; or when such mortgagee is a trustee merely and without interest therein, that he does not reside in the State of Michigan or is dead; and such petition shall conclude with a prayer that an order of the court may be made discharging said mortgage and declaring it fully paid and satisfied. Upon the presentation of such petition, said court may proceed to hear and determine the truth of the matters therein stated, and if it shall be made satisfactorily to appear to the court, either by the production in evidence of the original mortgage or of the bond, or bonds or promissory notes, to secure the payment of which such mortgage was given, or by any other competent evidence, that the debt secured by such mortgage has been fully paid, both principal and interest thereof; or if it shall be made to appear to the court by competent evidence that said mortgaged debt has been past due for fifteen years, or that fifteen years have elapsed since the last payment was made on such debt, and that no suit or proceeding has been commenced to foreclose such mortgage, the court shall make a certificate to that effect setting forth therein the names of the witnesses and the nature of the evidence by which such facts have been made to appear, and a minute thereof shall be entered in the journal of said court, and such certificate signed by the judge of said court and attested by the clerk thereof under the seal of said court, shall be delivered to the said petitioner and may be recorded in the office of the register of deeds for the county or counties in which such mortgage shall be of record, in like manner and with like effect in all respects as if it were a formal discharge of said mortgage duly executed by the mortgagee.

Hearing.

Certificate
to be entered
on journal
of court.

Recorded by
register
of deeds.

Sales of Lands Devised Without Power of Sale.

SEC. 62. Whenever any person shall be seized or possessed of any lands, tenements or hereditaments conveyed by deed or devised by will to such person for life, with or without power of appointment by will or sale, or of any lands tenements, or hereditaments devised to such person in trust, without power of sale, the circuit court in chancery for the county where such property is situated, may on the petition of such person having a life estate, order that such land, tenements and hereditaments, or any part thereof be sold under the direction of the court, whenever by a proper showing by witnesses produced before the court it shall satisfactorily appear that the rights of the interested parties will otherwise be jeopardized.

May be sold
under
direction
of court.

SEC. 63. Every conveyance made by the person so seized pursuant to such order of said court shall be as good and effectual in law, and shall convey the same title, as if the same were made by such person being seized of the title in fee to such lands, tenements and hereditaments.

Conveyance
good and
effectual
in law.

SEC. 64. For the purpose of obtaining such order of sale the person so seized of such lands, tenements or hereditaments shall file his petition in the circuit court in chancery for the county where such property is situated, setting out the facts, under oath and the names, residences and interests of all persons who are or may be interested in said property so far as the same is known to the petitioner, and praying that the lands, tenements and hereditaments therein described may be sold, and that the proceeds thereof may be invested under the order of the court, and thereafter treated as real property and subject to the same disposition as would have been made of said property had the same not been sold.

Petition to
be filed.

Contents.

SEC. 65. Said court shall thereupon enter an order requiring all persons interested in said property to appear before said court, at a time to be therein named, and show cause if any exist why the prayer of said petition shall not be granted, which order shall be returnable not less than six weeks nor more than twelve weeks from the date thereof, and a copy of such order shall be personally served upon all persons interested in said land if found in the State of Michigan at least ten days before the return day thereof, and shall be published once in each week for three successive weeks preceding the return day thereof in a newspaper printed and circulated in the county where such property is situated, and in the county in which the petitioner resides, and in such other place or places as the court may direct: *Provided*, That when such application shall be made by any trustee, a copy of such notice shall also be personally served upon the cestui que trust, at least ten days before the return day thereof.

Order of
appearance.

Proviso,
application
by trustee.

SEC. 66. Upon the return day of such order any person interested may appear and show cause against the granting of the prayer of the petition, and proofs may be taken and a hearing had in such manner as the court may direct,

Proofs and
hearing.

and if it shall satisfactorily appear to the court that the interests of the persons owning or interested in such property will be substantially promoted by the sale of the same on account of the said property being exposed to waste or dilapidation, or on account of its being unproductive, or for any other peculiar reasons or circumstances, then, in such case, it shall thereupon order that such property be sold under its direction, and that the proceeds stand in lieu thereof.

Order of court.

Sales, when confirmed, to be effectual.

SEC. 67. All sales made in pursuance of such order shall be reported to the court, and when confirmed the petitioner shall execute a conveyance of the property, which shall be as good and effectual in law, and shall convey the same title as if the person making the same were seized of the title in fee to such lands, tenements and hereditaments.

Bond.

SEC. 68. Upon the making of an order of sale as aforesaid the petitioner, or other person or persons appointed trustee or trustees by the court to receive the proceeds of said sale, shall give such bond, in such penalty and with such sureties, and in such form as the court shall direct, which bond shall run to the clerk of the court for the use and benefit of any person who may be or become interested in such lands, tenements or hereditaments, or their proceeds, conditioned for the investing of and accounting for the proceeds of such lands, tenements and hereditaments, and for the observance of all orders of the court in relation thereto.

Proceeds to stand in lieu of property.

SEC. 69. Upon the confirmation of such sale, the proceeds thereof shall thereafter stand in lieu of said property, and the court shall make such order as to the investment thereof as may be necessary. And from time to time thereafter such further orders may be made upon the application of any person interested as the circumstances may require.

No sale contrary to provisions of deed or will.

SEC. 70. No sale or conveyance of any kind shall be made of any property contrary to any specific provisions in regard thereto contained in the deed of conveyance, or in the will under which the petitioner holds the said property.

Of Barring the Right of Dower of Insane, Imbecile or Idiotic Married Women.

How dower may be barred.

SEC. 71. Whenever the wife of any person shall have become insane, imbecile, or idiotic, or for any cause shall be unable from defective intellect to join her husband in the conveyance of real estate, and shall have remained in that condition for more than two years, or when it shall be made to appear to the court that such married woman is incurably insane, she may be barred of her right of dower in the lands of her husband, in manner following.

Petition to court.

SEC. 72. The husband, or any person interested in any such real estate, may apply to the circuit court in chancery of the county where such lands, or any part of such lands are situated, by petition under oath, for the appointment of a guardian and for leave to sell her inchoate right of dower; which petition shall state:

What to state.

1. The name, age, and residence of such married woman, and the name, residence and age of her husband, as near as can be ascertained;

2. The nature of the disability of said married woman and the length of time it has existed;

3. A full description of the lands and premises in this State to be affected by such proceedings;

4. The value of each piece of real estate, and the amount of incumbrance upon it (if any), not affected by, or prior to her claim of dower;

5. If the real estate is to be sold by the husband, or has been sold by him, the exact amount of the consideration of such sale as made or agreed upon;

6. The reasons why such sale is desirable to said husband or petitioner.

SEC. 73. Upon the filing of such petition, the said circuit court in chancery shall enter an order that the petition be heard on a certain day, and notice of the hearing be given by publication or otherwise, in such manner and to such persons as said court shall direct. Order of hearing and notice.

SEC. 74. At such hearing the said wife may appear in person, or by counsel, or by guardian ad litem appointed as in other cases by said court, and may answer such petition in the time and manner said court may direct; and upon the filing of an answer the case shall be deemed at issue. When the case is at issue, or if the said wife shall fail to appear, the court may proceed summarily upon oral or written evidence taken under its order, to hear and determine the case; or, at its discretion, may refer it to a circuit court commissioner, or a special commissioner appointed by the court for the purpose to take proofs and report the same to the court with his opinion: Appearance of wife.
Answer.
Proceedings.

1. As to the insanity or imbecility of the wife;

2. As to the propriety or necessity of selling said real estate, or of barring her right of dower therein;

3. The cash value at that time of her dower interest in said premises, taking into consideration the respective ages of said husband and wife. Upon the coming in of said report the court shall consider the same, and enter such order as shall be just and equitable. If said court shall decide that the wife is insane, and that it is desirable that the right of dower should be barred, it shall fix the then present value of such dower, and thereafter shall appoint a guardian of such insane person, who shall be some person other than her husband, who shall give bond, in a sum to be fixed by the court, with surety or sureties, to be approved by the court, conditioned to receive and invest any moneys that may come into his hands for her sole use and benefit, under the order and direction of the court, both as to its investment and to the disposition of the income thereof. Order.
Guardian.
Bond.

SEC. 75. Upon the approval of such bond said guardian may proceed and sell at private sale, as such guardian, the Sale of interest by guardian.

Guardian's
conveyance of
dower right.

interest of such married woman in said land, at a sum not less than the value of said dower as fixed by said court. He may join with the husband in such conveyance, or if the husband has previously sold and conveyed said property, may, by separate conveyance, deed said right of dower to the husband's grantee or grantees, his or their heirs and assigns, but to no other person. Said conveyance shall in all cases be as effective to bar the right of dower of said married woman as if she had, being in sound mind, joined her husband in a deed of said premises.

Application
of income
of money.

SEC. 76. Said guardian shall apply the income of said money to the support of said married woman, or allow the same to accumulate, as the court shall direct; and upon the restoration of said married woman to a sound mind shall, upon the order of the court, transfer to her all the funds in his hands, and upon her death, shall deliver the same to her husband, if he shall be living at her death; if not living, then to her personal representatives.

Of Award of Money in Lieu of Dower in Lands Alienated by Husband in His Lifetime.

When court
may award
money in lieu
of dower.

SEC. 77. In any suit hereafter to be commenced by any widow for the recovery of dower in lands, which were alienated by her husband in his lifetime, and where dower cannot be assigned therein by metes and bounds without injustice or manifest injury to the widow, or to the owner or owners, or person or persons in possession thereof, or some one of them, the court having cognizance of the matter may award and adjudge a sum of money in lieu of dower to be paid to the widow, or may assign to her as tenant in common, a just proportion of the rents, issues and profits of said lands, regard being had in all cases to the true value of the lands at the time of such alienation by the husband, and of the probable duration of the life of the doweress, at the time such sum of money shall be adjudged, or such rents, issues and profits shall be assigned to her.

Of the Probate of Foreign Wills in Certain Cases.

Probate
of foreign
will.

SEC. 78. Whenever it shall become necessary to make probate in this State of the last will of any deceased person, which was executed in a foreign country, by the laws of which no probate of wills, after the death of the maker, is required or provided for, or, being executed in a foreign country, by the laws of which probate of wills, after the death of the maker, is required or provided for, but the testator, at the time of his death, is not domiciled in such foreign country, if the original will cannot be produced in this State for probate, the same may be proved and allowed in this State, by a full and complete copy thereof in the circuit court in chancery in and for any county, in which the maker of such will left any property, at his or her decease, affected by such will.

Proof by copy.

SEC. 79. Any person interested in the proof and allowance of any such foreign will, whether as executor, heir, devisee, legatee or otherwise, may file in any such circuit court in chancery a bill or petition setting forth the facts necessary to give said court jurisdiction in such case, making all proper persons parties thereto, and the proceedings thereupon to bring the defendants before the court shall be the same as is provided for in said court in other cases. Petition for allowance.

SEC. 80. Said court shall have full power by the means of commissions or letters rogatory, to take the testimony of any officer, magistrate or other persons having custody or possession of the original will, of the witnesses thereto, and of any other person whose testimony is required, and if upon the proofs of the case, a full and complete copy of such will is shown, and it shall sufficiently appear that the alleged will is valid, and sufficient to pass any of the property, real or personal, of the maker within this State, that said will was executed in a foreign country, that the maker is dead, and that the original will is retained in the foreign country, and cannot be produced in this State for probate, and that the laws of said foreign country do not require or provide for the probate of said will after the death of the maker, or, being executed in a foreign country, by the laws of which probate of wills, after the death of the maker, is required or provided for, but the testator, at the time of his death, is not domiciled in such foreign country, it shall then be lawful for said circuit court in chancery to admit said will to probate, or so much thereof as it shall find to be valid in this State, and such allowance and probate shall have the same effect as if the same had been made in any probate court of this State, of lawful jurisdiction, upon production and proof of the original will. Taking testimony.

SEC. 81. Any probate made as aforesaid, with a transcript of the will proven and allowed, shall be certified to and filed with the probate court of the county in which probate has been made, and thereupon said probate court shall have the same power and jurisdiction in respect to the estate of the deceased as if said will had been proven and allowed in said probate court. When court may admit to probate.

SEC. 82. The proceedings in the circuit court in chancery, unless otherwise herein provided, shall conform to the rules and practice of said court, and an appeal to the supreme court may be taken as in other cases. Probate to be filed with probate court.

SEC. 82. The proceedings in the circuit court in chancery, unless otherwise herein provided, shall conform to the rules and practice of said court, and an appeal to the supreme court may be taken as in other cases. Proceedings in court of chancery. Appeal.

CHAPTER XX.

Miscellaneous Provisions Concerning Actions.

SECTION 1. Upon due proof of service of any declaration or process requiring an appearance, answer or plea, or upon due proof of publication of an order for defendant's appearance, or of the personal service of such order, a default may be filed or entered against the defendant for want of such appearance, Entry of default.

Proviso,
judgment
against
foreign cor-
poration.
Oath to
sureties
or bail.

answer or plea, within the time provided by law, or by rule of court, and the same proceedings may be had against said defendant in all respects as if he had appeared, answered or plead thereto: *Provided*, That no judgment shall be rendered against a foreign corporation based upon such default, until the expiration of sixty days from the service of process.

SEC. 2. Whenever any officer is authorized to take any sureties, or bail, he shall be authorized to administer an oath to every person who shall be offered as such bail or surety, to ascertain his sufficiency.

Legal ad-
vertisements,
where
published.

SEC. 3. All legal advertisements shall be published in a newspaper printed in the county in which the proceedings are carried on, if there be one, and if no newspaper be printed in such county, then such advertisements shall be published in a newspaper published in an adjoining county, or in a paper published nearest to said county in which such proceedings are had.

Vexatious
prosecution.

SEC. 4. Every person who shall, for vexation and trouble or maliciously, cause or procure any other to be arrested, attached, or in any way proceeded against, by any process or proceeding at law, or in equity, or in any other manner prescribed by law, to answer to the suit or prosecution of any person, without the consent of such person, or where there is no such person known, shall be liable to the person so arrested, attached or proceeded against, in treble the amount of the damages and expenses which, by any verdict, shall be found to have been sustained and incurred by him; and shall be liable to the person in whose name such arrest or proceeding was had in the sum of two hundred dollars damages, and shall be deemed guilty of a misdemeanor, punishable on conviction, by imprisonment in the county jail for a term not exceeding six months.

Liability.

Penalty.

Neglect to
execute
process.

SEC. 5. Every sheriff, constable, or other officer, to whom shall be directed and delivered any attachment, summons, precept to summon a jury, warrant to apprehend a witness, or any other person, or any other process authorized to be issued by any judge, circuit court commissioner, or justice of the peace, in any special proceeding or matter before such judge, commissioner or justice, except civil suits before justices of the peace, shall execute such process as therein commanded, and for any wilful neglect so to do, may be fined by the officer issuing the same, in a sum not exceeding twenty-five dollars.

Penalty.

Neglect to
attend
as juror.

SEC. 6. When any person shall have been personally summoned to attend as a juror to inquire into any matter or thing, or to hear and try any controversy, in any special proceeding or matter specified in the last section, and shall wilfully neglect to attend in pursuance of such summons, he may be fined by the officer issuing the same, in a sum not exceeding twenty-five dollars; but this section shall not extend to any case where other special provision is made by law, for punishing the default of any juror.

Penalty.

SEC. 7. When any sheriff, constable or other officer, who shall have summoned any jury, in the cases mentioned in the two last sections, shall be required by the officer issuing such summons, to attend such jury and take charge of them, he shall be bound to do so; and for any wilful neglect to obey such order, or for any misconduct while attending such jury, by which the rights or remedies of any party to such proceeding may be impaired or prejudiced, such sheriff, constable or other officer, shall be liable to be fined by the officer before whom such jury shall have appeared, in a sum not exceeding twenty-five dollars.

Neglect to attend jury.

Penalty.

SEC. 8. Upon any fine being imposed in any of the cases hereinbefore specified, notice thereof shall be given to the person fined, to the end that he may render any excuse to the officer imposing such fine, or show cause why such fine should be remitted.

Notice of fine.

SEC. 9. If no such excuse be rendered, or cause shown, within thirty days after service of such notice, and such fine shall not have been remitted by the officer imposing the same, such officer shall make a special return of the delinquency or misconduct for which such fine was imposed, with the amount thereof, to the next circuit court for the county in which said delinquent shall reside.

Return of delinquency and fine.

SEC. 10. The clerk of the court to which such return shall be made, shall deliver a copy thereof to the prosecuting attorney of the county, with copies of the minutes of fines imposed by such court, and in the same manner; which shall be collected, and may be remitted or mitigated, in the same manner as fines imposed by courts of record, upon defaulting jurors.

Collection, etc., of fine.

SEC. 11. Every suit or proceeding in a civil cause instituted in the name of the people of this State, by any public officer duly authorized for that purpose, shall be subject to all the provisions of law respecting similar suits or proceedings, when instituted by or in the name of any citizen, except where provision is or shall be otherwise expressly made by statute; and in such suits and proceedings, the people of this State shall be liable to be nonsuited, and to have judgment of non pros. or of discontinuance entered against them, in the same cases, in like manner, and with the same effect, as in suits brought by citizens, except that no execution shall issue thereon.

Proceedings in civil causes by state to be same as in others.

SEC. 12. Whenever costs shall be adjudged against the people of this State, in any civil suit or proceeding instituted by any officer duly authorized for that purpose, it shall be the duty of the Auditor General to draw on the treasurer for the amount thereof, upon the production of an authenticated copy of the record of judgment, or of the order adjudging such costs, with a taxed bill thereof, and upon the certificate of the Attorney General that such suit or proceeding was duly instituted, as by law required.

Costs against people.

Action for
labor against
stockholders.

SEC. 13. An action of assumpsit may be maintained against all or any of the stockholders of any corporation or joint stock association, on their individual liability, for labor performed for such corporation or association, after an execution shall be returned unsatisfied, in whole, or in part, or after an adjudication in bankruptcy against such corporation.

Controversies
between or
with counties.

SEC. 14. Whenever any controversy or cause of action shall exist between any of the counties of this State, or between any county and any individual or individuals, such proceedings shall be had either in law or equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect, as in other suits or proceedings between individuals and corporations.

Loss of ser-
vice in
seduction,
not necessary
to be proved.

SEC. 15. It shall not be necessary in any action on the case for seduction hereafter to be brought, to allege in the declaration, or to prove on the trial, any loss of service in consequence of such seduction; but if the female seduced be a minor at the time of the seduction, the action may be brought by her father, mother, or guardian; and if such female be of full age, the action may be brought by her father, or any other relative who shall be authorized by her to bring the same.

Sufficiency of
declaration in
seduction.

SEC. 16. It shall not be necessary in any such action to allege or prove that the person seduced was the servant of the plaintiff, but instead thereof, it shall be sufficient to set forth in the declaration the relationship of such person to the plaintiff, or that such person is the ward of the plaintiff, as the case may be.

Construction
of last two
sections.

SEC. 17. The two last sections shall not be so construed as to prevent any person entitled to the services of the person seduced, from maintaining an action for the loss of service or other damage sustained by him in consequence of the seduction.

Agreement
on case.

SEC. 18. The parties to any civil cause depending in any court of record, may agree upon a case containing the facts relating thereto, and submit the same to said court; and the court shall thereupon determine and render judgment in such cause, in the same manner as upon a special verdict finding such facts.

Notice of
justification
not proof
of malice.

SEC. 19. If the defendant in any action for slander or for publishing a libel, shall give notice in his justification, that the words spoken or published were true, such notice, though not maintained by the evidence, shall not, in any case, be of itself proof of the malice charged in the declaration.

Imputation
of want of
chastity
actionable.

SEC. 20. Words imputing to any female a want of chastity shall be deemed to be actionable in themselves, and shall subject the person who shall utter and publish such words, to an action on the case for slander, in the same manner as the uttering and publishing of words imputing the commission of a criminal offense.

Damages for
libel, etc.

SEC. 21. In suits brought for the recovery of damages for libel or slander in this State, the plaintiff shall be entitled to

recover only such actual damages as he may have suffered in respect to his property, business, trade, profession, occupation or feelings.

SEC. 22. In awarding damages to the plaintiff in any suit brought for the recovery of damages for libel or slander in this State, the jury shall in all cases specify the amount awarded for damages to feelings separately from the amount awarded for other damages mentioned in the foregoing section.

SEC. 23. No exemplary or punitive damages shall be recovered unless the plaintiff shall before bringing suit give notice by mail or otherwise to the defendant to publish a retraction of the libel, and allow the defendant a reasonable time in which to publish such retraction, and make such amends as are reasonable and possible under the circumstances of the case; and proof of the publication or correction shall be admissible in evidence under the general issue on the question of the good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages; *Provided*, That the retraction shall be published in the same type and in the same editions of the paper as the original libel, and so far as practicable in the same position.

SEC. 24. In actions brought for the recovery of damages for libel in this State, it shall be competent for the defendant or defendants in such action to show in evidence upon the trial of such action that the plaintiff in such action has heretofore recovered a judgment or judgments for damages in an action or actions for libel or libels to the same, or substantially the same purport or effect as the libel for the recovery of damages for which such action has been brought, or that the plaintiff in such action has theretofore brought an action or actions for such libel or has received or agreed to receive compensation for such a libel.

SEC. 25. Any defendant or defendants against whom any suit shall be begun for the purpose of recovering damages arising from the publication of any libel, and on whom a declaration or other process in such suit shall have been served, may, at any time within fifteen days after such service, serve on any other person liable to contribute to such defendant under the provisions of section one of act two hundred thirty-three of the Public Acts of nineteen hundred eleven, relating to the liability of joint tort feors in certain cases, a notice of the pendency of such suit; which notice shall state the name of the plaintiff or plaintiffs therein, the name of the court in which the same is pending, and shall be accompanied by a true copy of the declaration filed in said suit, if such declaration shall have been filed prior to the service of such notice. And such person on whom such notice shall have been so served shall have the right to appear within fifteen days from the time of the service on him of such notice, and intervene in such suit and defend the same. Such person, if he so appears, shall have the same rights and liabilities in respect to pleadings and process as if he were an original

Damages
to feelings.

Exemplary
damages.

Proviso,
publication of
retraction.

What
defendant
may show
in actions
for libel.

Intervention
of joint tort
feors in
libel.

Failure to appear.	party defendant in such suit, and such suit shall not be considered at issue until the same is at issue as to such intervening party. And in case he shall fail after such notice to so appear in and defend such suit the final judgment rendered therein shall be conclusive against him in any action for contribution under the provisions of said act.
Copy of suggestion on record, to be served.	SEC. 26. Whenever a suggestion shall be made upon the record, or in any stage of the proceedings in any cause, which the adverse party shall have a right to controvert, a copy of such suggestion shall be served upon the adverse party or his attorney, in the same manner as other pleadings, and such party may plead thereto, according to the practice of the court, in the same manner, and within the same time, as to a declaration.
Trial of issue on suggestion.	SEC. 27. If an issue of fact be joined upon any such suggestion, the same shall be tried, and judgment rendered thereon, as on other issues.
Judgment, etc.	SEC. 28. The party making such suggestion may be non-suited, and may have judgment of non pros or discontinuance entered against him, for the same causes, and in the same cases as in suits at law.
Actions for malpractice.	SEC. 29. If any person professing or holding himself out to be a physician or surgeon, shall be guilty of any malpractice, an action on the case may be maintained against such person so professing, and the rules of the common law, applicable to such actions against licensed physicians and surgeons, shall be applicable to such actions on the case; and such malpractice, may be given in evidence, in bar of any action for services rendered by such person so professing.

Proceedings for Enforcement of Individual Liability of Stockholders.

How individual liability enforced.	SEC. 30. Whenever, by the constitution or laws of this State, the stockholders of any corporation are individually liable for any debts of such corporation, the remedy for the enforcement of such liability shall be as hereinafter prescribed, and not otherwise: <i>Provided</i> , That this and the next succeeding twelve sections shall not apply to cases where the suit is for labor, and the action is brought by the person who performed the labor, or his assignees.
Proviso, application of sections.	
When proceeding to be taken.	SEC. 31. No proceeding shall be taken to enforce such liability until after a judgment has been recovered against the corporation on account of such indebtedness, and an execution issued upon such judgment to the county in which its principal office is situated or its business carried on has been returned unsatisfied, in whole or in part.
Secretary to file list of stockholders, etc.	SEC. 32. Whenever judgment has been recovered against any corporation for an indebtedness for which the stockholders of such corporation are by law liable, and an execution has been issued thereon as above provided, and returned unsatisfied, the court, upon application of the plaintiff, shall enter an order in such suit requiring the secretary, or other

proper officer of such corporation, within a time designated in such order, to file in said cause a statement, under oath, of the names and residences of all persons, who appear by the books of such corporation, or that such officer has reason to believe were stockholders therein at the time the debt for which such judgment was recovered, accrued, and the amount of stock held by each of said persons, and upon service upon such officer of a duly certified copy of such order, it shall be his duty to comply therewith.

SEC. 33. The statement mentioned in the last preceding section having been filed, plaintiff may make and file in the case his petition in writing, setting forth:

Petition,
what to
set forth.

1. That he has obtained a judgment against the corporation, and the amount thereof;

2. That execution has been issued thereon and returned in whole or in part unsatisfied, as the same may be, and the sum remaining unpaid thereon;

3. That the several persons named in such statement of the officer of the corporation were, at the date the debt accrued on which the judgment was rendered, stockholders in such corporation, and the amount of stock held by each;

4. What was the consideration received by the corporation for the debt on which such judgment was rendered;

and praying that judgment may be awarded against said several stockholders in favor of the plaintiff for the sum so as aforesaid averred to be due from said corporation, and that a citation may issue from said court, under the seal thereof,

Prayer for
judgment,
etc.

to the said several stockholders, requiring them to appear in said cause, on a certain day to be therein named and answer why judgment should not be entered against them as therein prayed. On the filing of such petition, an order for citation to issue shall be made as of course, and it shall be the duty of the clerk of the court immediately to issue the same, which shall be addressed to the several persons named in the petition as stockholders, and may be served by any person in any part of this State. The return day of such citation shall not be less than fifteen nor more than thirty days from the date of its issue. Jurisdiction over any of the persons named in such citation shall be secured by a personal service of the same within this State.

Order for
citation.

Service
and return.

SEC. 34. On the return day named in such citation, or at such time thereafter as the court may allow for that purpose, each of the persons so cited and served shall make separate and several answer in writing, signed by him, to such petition; which answer, if the liability be denied, or facts shall be relied upon in defense against such charge of liability, shall contain a statement of such facts, or the specific grounds of defense, and shall be verified by the oath of the defendant.

Answer.

SEC. 35. The issue thus made by the petition and answer, whether of fact or law, shall be tried in the same manner as like issues of fact or law.

Issue,
how tried.

Judgment,
evidence
of what.

SEC. 36. On the trial of any issue of fact formed as aforesaid, the judgment against the corporation and the amount thereon remaining unpaid, as shown by the return of the execution thereon, shall be prima facie evidence of the sum due to the plaintiff, but not that the debt on which said judgment was rendered is one for which defendants are personally liable.

Each issue
deemed
original suit.

SEC. 37. Each of the issues so formed shall be deemed and treated as an original suit or cause in respect to the payment of the county jury and stenographer's fees, and the final taxation of costs. The right of review by the supreme court, and the method of procedure to secure it, shall be in all respects the same as in a common law trial.

Review.

Judgment on
admission or
default.

SEC. 38. If any such defendant shall answer admitting the facts set forth in such petition, or if default in answering shall be made by any of them, judgment shall at once be rendered against such defendant, severally, for the amount remaining unpaid of the judgment against said corporation, upon proof being made that the debt is one for which such defendant, as stockholder, is personally liable.

Judgment.

SEC. 39. If any such issue of law or of fact shall be determined adversely to the defendant, judgment shall thereupon be awarded against him for the full amount remaining unpaid of the judgment against such corporation, if it shall have been determined that such judgment was for a debt for which such defendant is personally liable as a stockholder in said corporation, or upon proof of that fact.

Apportion-
ment of sum.

SEC. 40. After the several issues so formed shall have been determined and judgment awarded against the several persons named in such petition, and personally served with citation to appear as hereinbefore provided, who have been adjudged liable, the court shall make an order in the cause apportioning between them the sum for which they have thus been severally adjudged liable, pro rata, according to the stock held by each. If any of the defendants shall refuse or neglect to pay the amount apportioned against him, for the period of fifteen days thereafter, an execution shall be issued against his goods and chattels for the collection thereof.

Re-appor-
tionment.

SEC. 41. On the return of such execution unsatisfied in whole or in part, or if for any cause there shall be a failure to collect of any of the defendants the sum so as aforesaid apportioned against him, the court shall have power, and it shall be its duty on application by or on behalf of the plaintiff, and the fact being made to appear, to re-apportion the sum so remaining uncollected, on the basis of the preceding section provided, among the remainder of said defendants so adjudged liable, and an execution shall issue for the collection thereof in like manner as provided in said last named section.

Contribution.

SEC. 42. Any stockholder who shall be compelled to pay more than his pro rata share of the debts of the corporation shall be entitled to enforce contribution from such other of the stockholders as are also liable for such debts and have not contributed their due proportion in payment thereof.

Actions for Private Nuisances.

SEC. 43. In actions on the case for a private nuisance. Judgment of abatement. when the plaintiff prevails, he shall, in addition to the usual judgment for damages and costs, also have judgment that the nuisance be abated and removed, unless the judge holding the circuit court at which any issue of fact joined therein shall be tried shall certify in the minutes of such trial that the abatement thereof is unnecessary.

SEC. 44. In case of a judgment that the nuisance be abated and removed, the plaintiff shall have execution in the common form for his damages and costs, and a separate warrant to the proper officer, requiring him to abate and remove the nuisance, at the expense of the defendant, in like manner as public and common nuisances are abated and removed. Execution and warrant of abatement.

SEC. 45. The court may, on the application of the defendant, order a stay of such warrant for such time as may be necessary, not exceeding six months, to give him an opportunity to remove the nuisance, upon his giving satisfactory security to do so within the time specified in the order. Stay of warrant.

SEC. 46. The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts; and the officer may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand; and if the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided. Expense of abatement.

CHAPTER XXI.

Suits on Official and Other Bonds.

SECTION 1. When an action shall be prosecuted in any court of law upon any bond of any public officer, or upon any bond for the breach of any condition, other than the payment of money, or for any penal sum for the non-performance of any covenant or written agreement, the plaintiff shall assign the specific breaches for which the action is brought, and upon the trial of such action, the verdict and judgment shall be for such damages as are found arising from the specific breaches assigned; and such judgment shall not be a bar to any further action by the same, or any other plaintiff, for any subsequent breaches of the condition of said bond; but said bond shall stand as security for any further or subsequent breaches to the amount of the remainder of the penalty thereof. Assignment of specific breaches. Subsequent breaches.

Pendency of suit not to affect suits for subsequent breaches.

SEC. 2. During the pendency of any suit upon such **official** bond, or after judgment rendered in such suit, any **other** party aggrieved by the default or delinquency of such **officer**, may, in like manner prosecute an action upon such **official** bond; and the pendency of any other suit on the same bond, or a judgment recovered by or against any other person on such bond, shall not abate or in any manner affect such suit, or the proceedings therein, except as hereinafter provided.

Suit, how barred.

SEC. 3. No such suit shall be barred, nor shall the amount which the plaintiff may be entitled to recover therein, be affected by any notice given by any surety in such bond, of a judgment recovered thereon, unless it be accompanied by an allegation that the sureties in such bond, some or one of them, have been obliged to pay the damages assessed by such judgment, or some part thereof, for the want of sufficient property of such officer whereon to levy the same, or that they will be obliged to pay the same, or some part thereof for the same reason; nor unless such notice be verified by the oath of the defendant giving the same.

If damages paid equal liability, defendant acquitted.

SEC. 4. If it shall appear that the amount of any damages so recovered, which such surety has been obliged to pay, or will be obliged to pay, as specified in the last section, is equal to the amount for which such defendant shall be liable, by virtue of the bond, he shall be acquitted and discharged of all further liability, and judgment shall be rendered in his favor.

Where damages paid do not equal liability.

SEC. 5. If it shall appear that the amount of any damages so recovered, which such surety has been obliged to pay, or which he will be obliged to pay, is not equal to the liability of such surety, the amount thereof shall be allowed to such defendant, in estimating the extent of his liability in any such action.

Execution levied first against officer, etc.

SEC. 6. Whenever a judgment shall be obtained against an officer and his sureties, a direction shall be indorsed on the execution issued thereon, by the attorney issuing the same, to levy the amount of such execution, in the first place, of the property of such officer, and if sufficient property of such officer cannot be found to satisfy such execution, then to levy the deficiency of the property of the sureties.

Where judgments exceed liability of sureties.

SEC. 7. Whenever several judgments shall be obtained at the same term, upon any official bond of any officer, for damages, amounting in the whole to more than the sums for which the sureties therein shall be liable, the court shall order the moneys levied upon such judgments from the property of the sureties, to be distributed to the persons for whose use such judgments were recovered respectively, in proportion to the amount of their respective recoveries.

Distribution of moneys raised on executions.

SEC. 8. If executions be issued upon several judgments obtained at the same term, upon any such official bond, and sufficient moneys shall not be raised to satisfy all of the said executions, the court shall distribute the moneys collected on such executions to the plaintiffs in proportion to the amount of their respective recoveries.

CHAPTER XXII.

Of Judgments and Decrees.

SECTION 1. When a verdict shall have been rendered in any action, the plaintiff shall not thereafter be nonsuited, but judgment shall be rendered upon the matter found by such verdict. Judgment upon verdict.

SEC. 2. No judgment in any court of record shall be set aside for irregularity on motion, unless such motion be made within one year after the time such judgment was rendered. Motion to set aside judgment.

SEC. 3. Judgments may be entered in any circuit court at any time, upon a plea of confession, signed by an attorney of such court, although there be no suit then pending between the parties, if the following provisions be complied with, and not otherwise: Judgment upon plea of confession.

1. The authority for confessing such judgment shall be in some proper instrument, distinct from that containing the bond, contract or other evidence of the demand for which such judgment was confessed;

2. Such authority shall be produced to the officer signing such judgment, and shall be filed with the clerk of the court in which the judgment shall be entered, at the time of the filing and docketing of such judgment.

SEC. 4. Whenever any person shall become security for costs for another, in any court in this State, whether such security be required by law to be given, or be required by order of the court, in case the defendant in any such action shall recover final judgment or decree for costs against the plaintiff, thereupon judgment or decree shall be immediately, and in such suit, entered, as well against such surety as against such plaintiff, and execution may issue against such surety, in the same manner as if he had been himself a party to such suit. Judgment against surety for costs.

SEC. 5. In all cases where judgment shall be rendered against the appellant in the circuit court, or in the supreme court, the same may, on motion of the appellee made before judgment against the appellant, be entered against both appellant and surety, and be collected on execution against them as in ordinary cases of judgment against two or more. Judgment against appellant and surety.

SEC. 6. And in any case where the defendants, or any two or more of them, shall have taken any cause where they are joint defendants by appeal to the circuit court from the justice court, and shall have filed a bond on appeal and on the trial in the circuit court, a verdict shall be rendered for one or more of such defendants so appealing, the surety or sureties on such appeal bond shall not be released from his or their liability on such bond by reason of such verdict, but judgment shall enter against said surety or sureties as well as against the defendant or defendants against whom verdict is rendered on such trial in the circuit court. Judgment against sureties on appeal bond.

Restitution,
when
awarded.

SEC. 7. In case any amount is collected on any judgment or decree, if such judgment or decree be afterward reversed the court shall award restitution of the amount so collected, with interest from the time of collection.

Judgment in
actions on
joint ob-
ligations.

SEC. 8. In actions against two or more persons, upon any joint obligation, contract or liability, upon due proof that the process or declaration has been served upon either of such persons, the defendant so served shall answer to the plaintiff, and the judgment in such action if rendered in favor of the plaintiff, shall be against all of the defendants in the same manner as if all had been served.

Judgment,
evidence
of what.

SEC. 9. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein; but against every other defendant, it shall be evidence only of the extent of the plaintiff's demand after the liability of such defendant shall have been established by other evidence.

Order against
joint de-
fendants
not served.

SEC. 10. In either of the cases mentioned in the preceding sections, the plaintiff in the judgment may on motion, have an order against the defendants therein who were not served with the process or declaration by which the suit was commenced, by which the parties against whom it is issued shall be required to appear before the court in which such judgment shall have been rendered, to show cause why the plaintiff ought not to have execution against them upon such judgment, in the same manner, and with the like effect, as if they had been served with the process or declaration by which the suit was commenced.

When
execution
to issue.

SEC. 11. If any such defendant, after due service of such order, shall fail to appear on the return day thereof, or if he shall appear and show no sufficient cause to the contrary, the court shall make an order that execution issue against such defendant in the same manner, and with the like effect, as if he had been served with the process or declaration by which the suit was commenced, and thereupon execution may be issued and served accordingly.

Judgment
against
defendants
as right
may appear.

SEC. 12. In any action against two or more defendants, judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favor of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default, by pleading or on trial; and when judgment shall be rendered in favor of any defendant, he shall recover costs against the plaintiff, in the same manner as though judgment had been rendered for all the defendants; but no judgment shall be entered upon any purely several liability against any party not served with process.

Costs against
plaintiff.

Judgment
against part of
defendants.

SEC. 13. It shall not be necessary for the plaintiff to include in the same record a judgment against all parties severally, or jointly and severally liable, but judgment may be entered against any of the parties thereto, whenever the plaintiff would be entitled to the same if the suit had been

commenced against such parties only; and if the trial or hearing of such cause be put off by any of the parties, or if a default shall have been obtained against part of the defendants, the plaintiff may proceed to the hearing or trial against the other parties, in the same manner as if the suit had been commenced against the other parties only, and the action shall thereby be severed.

SEC. 14. One or more of the defendants in any suit may move for judgment as in case of nonsuit, although the other defendants shall not unite in the motion; but one of several defendants jointly liable shall not make such motion, unless the other joint contractors with him shall unite in the motion.

Motion for judgment by one defendant, etc.

SEC. 16. After the expiration of twenty days from the time a final decree shall be entered, if no appeal therefrom shall have been claimed, and no petition for a rehearing shall have been presented, the clerk by whom such final decree shall have been entered, shall attach together the bill, pleadings and such other papers filed in the cause, as may from time to time by general rules be directed, together with the taxed bill of costs therein, and shall annex thereto a copy of the decretal order, signed by the circuit judge, and countersigned by the clerk who entered the same.

Enrollment of decree.

SEC. 17. The clerk shall then annex to the papers so attached together, his certificate, under the seal of the court, wherein he shall certify according to the fact, the time when the said papers were so attached for the purpose of enrollment, and the name or names of the parties at whose instance the same was done; and thereupon, the said papers so attached, annexed, and signed, together with said certificate, shall be filed by the clerk, and remain a record in his office; and such certifying and filing shall be deemed an enrollment of the decree and proceedings, for all purposes whatsoever.

Certificate of enrollment.

SEC. 18. After the entry and enrollment of any final decree affecting or determining the title to real estate, a copy of such decree, duly certified by the clerk of the county in which the same was entered, under the seal of the court, may be received and recorded in the office of the register of deeds of the proper county, and shall have the same effect as the original decree; and if such decree shall direct the execution of a conveyance or other instrument affecting the title to real estate, the record of such certified copy shall have the same effect as the record of such conveyance or other instrument affecting the title to real estate would have if duly executed pursuant to said decree.

Record of decree in office of register of deeds.

Effect.

SEC. 19. Upon producing and filing with the clerk with whom any decree may have been entered, a written acknowledgment by the party in whose favor such decree was rendered, that he has been fully paid and satisfied, the amount of all moneys directed by such decree to be paid, certified by some officer authorized to take the acknowledgment of deeds, to have been duly acknowledged before him by the party signing the same, the clerk shall enter in the docket of such decree,

Acknowledgment of satisfaction of decree.

a note of the satisfaction and discharge thereof, and such decree shall thereupon be discharged, and be of no force or validity.

Discharge
of decree.

SEC. 20. The court shall have power to order a decree to be discharged upon a hearing of the parties, and upon satisfactory evidence that such decree has been fully paid or satisfied.

Omission to
sign decree
or record.

SEC. 21. When any judge shall have failed or omitted to sign any decree by him passed, or any record or journal of a court held by him, his successor, or any other judge holding the same court, may sign such decree, record or journal, and with like force and effect as if the same had been signed by the judge who passed the decree, or held the court to which said record or journal belongs.

Record nunc
pro tunc.

SEC. 22. Any decree of the former court of chancery, or of the circuit court in chancery, that may have been duly passed and signed, and not reversed, vacated or annulled, and which may have failed to be recorded or enrolled, may be directed by the court having the legal custody of the files in the case in which such decree was pronounced, in its discretion, to be recorded and enrolled by the clerk of the court, nunc pro tunc; and when so recorded and enrolled the same shall be as effectual as if recorded and enrolled at the end of thirty days after its allowance.

Stay of
proceedings
upon verdict
or judgment.

SEC. 23. No stay of proceedings upon any verdict or judgment rendered in any circuit court in this State shall hereafter be granted or allowed for the purpose of moving for a new trial or settling a bill of exceptions in the case in which such verdict or judgment was rendered, for a longer period than twenty days, unless the party applying for such stay, if judgment shall have been rendered against him, shall execute to the adverse party a bond with sufficient sureties in such sum as the circuit judge, before whom the cause was tried, shall designate, conditioned to pay such judgment if the same is not set aside or reversed and that if a writ of error is issued in said cause that the appellant shall prosecute his writ to effect and shall pay and satisfy such judgment as shall be rendered against him thereon. Notice of the time and place when said bond shall be presented to the circuit judge for approval shall be served upon the adverse party at least four days before the same shall be approved.

Bond for stay.

Stay
without bond.

SEC. 24. In case the party applying for such stay of proceedings shall be unable to give such bond by reason of poverty, the judge may, upon due proof of inability for such reason, grant such stay without requiring such bond for such reasonable time as the judge may determine.

Where
bond filed.

SEC. 25. The bond required by section twenty-three shall be filed with the clerk of the court in which such judgment is rendered.

No further
bond re-
quired.

SEC. 26. No further or other bond shall be required to stay and supersede execution upon any writ of error issued out of the supreme court of this State by or on behalf of the party filing the bond mentioned and required in section twenty-

three of this chapter: *Provided*, That where the judgment of the circuit court is against the defendant in an action to recover possession of lands, brought under chapter thirty of this act, the penalty of said bond shall be not less than double the amount of the annual rental value of said premises and with a further condition, that if plaintiff obtain restitution of the premises in said suit, the said defendant will forthwith pay all rent due or to become due, or the rental value thereof, during the time the same has been retained by the defendant, to the plaintiff for the premises described in the complaint, up to the time said plaintiff shall obtain possession thereof; together with the costs of suit in prosecuting said complaint and obtaining restitution of said premises; and if the plaintiff obtain restitution of said premises, he may, at his election, sue and recover on said bond, or bring his action against the defendant, under section twenty-three of chapter thirty of this act. Proviso,
penalty
of bond.

CHAPTER XXIII.

Of Executions.

SECTION 1. Whenever judgment shall have been or may hereafter be rendered in any court of record, execution to collect the same may be issued to the sheriff, or other proper officer of any county of this State; and successive or alias executions may be issued one after another, upon the return of any execution unsatisfied in whole or in part, for the amount remaining unpaid upon any such judgment. Such executions shall be made returnable not less than twenty nor more than ninety days from the date thereof. Issue.

Alias
executions.

Returnable.

SEC. 2. Whenever a transcript of a judgment rendered by a justice of the peace shall have been filed and docketed by the clerk of the circuit court for the county, all executions thereon shall be issued out of and under the seal of such circuit court; and such execution shall be in the same form as near as may be, as other executions issued out of the circuit court. Execution on
justice's
transcript.

SEC. 3. Such execution may be either: Execution.

1. Against the goods and chattels, lands and tenements of the party against whom such judgment was recovered; or
2. Against the body of such party, in the cases authorized by law.

SEC. 4. But such execution shall not issue against the body, nor against the goods and chattels, lands and tenements of any executor, administrator, heir, devisee or legatee, unless in those cases specially provided by law. Against body
or goods and
chattels.

SEC. 5. Upon the receipt of any execution it shall be the duty of the sheriff or other officer to indorse thereon the year, month, day and hour of the day, when he received the same. Sheriff to
indorse time
of receipt.

SEC. 6. Whenever an execution shall be issued against the property of any person, his goods and chattels, lands and tene- When
property
bound.

ments, levied upon by such execution, shall be bound from the time of such levy.

Precedence
of several
executions.

SEC. 7. If there be several executions issued out of a court of record, against the same defendant, that which shall have been first delivered to the officer to be executed shall have preference notwithstanding a levy may be first made under another execution, but if a levy and sale of any goods or chattels shall have been made under such other execution, before an actual levy under the execution first delivered, such goods or chattels shall not be levied upon or sold by virtue of such first execution.

Several
executions or
attachments.

SEC. 8. If there be one or more executions, and one or more attachments against the property of the same person, or if there be several attachments, the same rule prescribed in the last section shall prevail in determining the preference of such execution or attachment.

Execution or
attachment
from court
not of record.

SEC. 9. But any execution or attachment issued out of any court, not being a court of record, if actually levied, shall have preference over any other execution or attachment issued out of any court, whether of record of [or] not, which shall not have been previously levied.

May be issued
to sheriffs of
different
counties.

SEC. 10. Executions, whether against the property of any person, or against the body of any person, for the collection of judgments and decrees of courts of record in this State, may be issued at the same time to sheriffs of different counties and enforced therein by them, but no execution against the body of any person shall issue, while there is an execution against his property not returned, nor shall an execution against the property of any person be issued while there is an execution against his body unreturned, unless by order of the court rendering such judgment or decree.

Execution
against
body and
property.

Sale, how
made.

SEC. 11. In case of levies made on more than one of such executions provided for in the foregoing section, sale shall only be made on one execution at a time and under the direction of the plaintiff's attorney. And no more sales of the property shall be made than is necessary to satisfy such judgment or decree.

Command of
execution.

SEC. 12. Executions to authorize the sale of real estate shall command the officer to whom they are directed that of the goods and chattels of the person against whom such execution shall issue, in the county of such officer, he shall cause to be made the debt, damages or other sum of money, and costs, for which the judgment was rendered; and if sufficient goods and chattels cannot be found, that then he cause the amount of such judgment to be made of the real estate of the person against whom such judgment was rendered within such county.

Against
partnership
associations.

SEC. 13. Executions against partnership associations, and the individual members of such associations, shall be subject to the provisions of section two of act one hundred ninety-one of the Public Acts of eighteen hundred seventy-

seven, the same being compiler's section six thousand eighty of the Compiled Laws of eighteen hundred ninety-seven.

SEC. 14. If upon an appeal, a recovery for a debt or damages be had by one party, and costs be awarded to the other party, execution shall issue only in favor of the party to whom there shall be a balance due for the amount of such balance. Execution for balance.

SEC. 15. Executions between the same parties may be set off one against another, if required by either party, in the manner, and subject to the provisions mentioned in the following sections. Set off of executions.

SEC. 16. When one of the executions is delivered to an officer to be served, the person who is the debtor therein may deliver his execution to the same officer, whether the second execution is directed to the same or any other officer, and the officer shall apply it, as far as it will extend, to the satisfaction of the first execution, and make an endorsement of such application on each of said executions, and the balance due on the larger execution may be collected and paid in the same manner as if there had been no set-off. Second execution delivered to same officer.
Collection of balance.

SEC. 17. Such set-off shall not be allowed in the following cases: When set-off not allowed.

1. When the creditor in one of the executions is not the debtor in the other, in the same capacity and trust;

2. When the sum due on the first execution shall have been lawfully and in good faith, assigned to another person, before the creditor in the second execution became entitled to the sum due thereon;

3. When there are several creditors in one execution, and the sum due on the other is due from a part of them only;

4. When there are several debtors in one execution, and the sum due on the other is due to a part of them only;

5. Nor shall it be allowed as to so much of the first execution as may be due to the attorney in that suit, for his taxable fees and disbursements.

SEC. 18. Whenever there shall be any reasonable doubt as to the ownership by a judgment debtor of any goods or chattels; or as to their liability to be taken upon an execution, the officer holding such execution may require of the judgment creditor sufficient security to indemnify him for taking such goods and chattels thereon; and if such security be refused, such officer shall not be liable for omitting to take such goods or chattels. Indemnity by judgment creditor.

SEC. 19. Where judgment is rendered in form against two or more joint defendants, if process was not served upon all of such defendants, the execution issued thereon shall have endorsed thereon the names of such defendants as were not served with process, and such execution shall not be served upon the person, nor shall it be levied upon the sole property of any such defendant, but it may be levied upon any personal property owned by him as a partner with the other defendants who were served, or with any of them. Indorsement of names of defendants not personally served.

- Interest.** SEC. 20. When execution shall be issued upon any judgment or decree, interest on the amount thereof from the time of entry of the same until such amount shall be paid, shall be collected at the rate of five per cent per annum: *Provided*, That on a judgment or decree rendered on any written instrument having a different rate, if such rate was legal at the date of the execution of such instrument, the interest shall be computed at the rate specified in such instrument.
- Proviso, different rate.**
- Death of officer before completion of service.** SEC. 21. When an officer shall have begun to serve an execution and shall die, or be incapable of completing the service and return thereof, the same may be completed by any other officer who might by law have executed the same if originally delivered to him; and if the first officer shall not have made a certificate of his doings, the second officer shall certify whatever he shall find to have been done by the first, and shall add thereto a certificate of his own doings in completing the service.
- Completion of service after return day.** SEC. 22. When an officer shall have begun to serve an execution issued out of any court of record, on or before the return day of such execution, he may complete the service and return thereof after such return day.
- When defendant in custody.** SEC. 23. When any defendant at the time judgment shall be rendered against him, in any court of record, shall be in the custody of the sheriff or other officer, either upon process in the suit in which such judgment shall have been rendered, or upon being surrendered in discharge of his bail in such suit, the plaintiff in such judgment shall charge such defendant in execution thereon, within twenty days after such judgment shall have been obtained.
- Surrender after judgment.** SEC. 24. When any defendant shall be in custody upon a surrender in discharge of his bail, made after a judgment obtained against him, and such bail shall be thereupon exonerated, the plaintiff in such judgment shall charge such defendant in execution thereon, within twenty days after such surrender, or if an execution against the property of such defendant shall have been issued, within twenty days after the return day of such execution.
- Discharge of defendant.** SEC. 25. If any plaintiff shall neglect so to charge any defendant in execution, as required by the two last preceding sections, such defendant may be discharged from custody by a supersedeas, to be allowed by any judge of the court in which such judgment shall have been obtained, unless good cause to the contrary be shown; and after being so discharged, such defendant shall not be liable to be arrested upon any execution which shall be issued upon such judgment.
- When execution against body to issue.** SEC. 26. In those cases in which bail shall have been taken on the arrest of a defendant, and the bail bond shall have been assigned to the plaintiff; and in those cases in which special bail shall have been filed, no execution shall issue against the body of the defendant in such action, until an execution against the goods and chattels, lands and tenements of such

defendant, shall have issued to the sheriff or other proper officer of the county in which such defendant was arrested, and shall have been returned unsatisfied, in whole or in part.

SEC. 27. But if the defendant be imprisoned on execution in another cause, or upon process in the same action, or upon the surrender of such defendant in exoneration of his bail in such action, or if an execution shall have been returned unsatisfied in the cases mentioned in the last section, an execution may, in either case, issue against the body of such defendant. Defendant imprisoned.

SEC. 28. When the body of a party shall have been taken on an execution issued for that purpose, no other execution can be issued against him or his property, except in cases specially provided for by law. When body taken, no other execution to issue.

SEC. 29. But if any person who shall have been taken on an execution shall escape, he may be retaken by a new execution against his body, or an execution against his property may be issued, in the same manner as if no execution had been previously issued against the body or the property of such person. Escape.

SEC. 30. Whenever any person shall be arrested by virtue of any execution issued upon any judgment, he shall be safely kept in secure custody, in the manner prescribed by law, at his own expense, until he shall satisfy the execution, or be discharged according to law. Custody of defendant.

SEC. 31. Every person surrendered in exoneration of his bail shall be kept in like manner, until he shall satisfy the judgment rendered against him, or be discharged according to law. Person surrendered.

SEC. 32. If any person taken in execution against his body shall die while so charged, the judgment upon which such execution issued shall not be deemed to be extinguished, but may be certified to the judge of probate, and shall be paid in the course of administration in like manner as if no execution had issued on such judgment. Death of person taken.

SEC. 33. When an execution shall have been issued, an order to stay proceedings thereon, granted by a circuit court commissioner, shall not prevent a levy on property by virtue of such execution, but shall only suspend a sale thereon until the decision of the proper court upon the matter. Effect of stay of proceedings.

SEC. 34. Nor shall any such commissioner grant any order to stay proceedings on any execution against the body of a defendant, unless such defendant shall have executed to the plaintiff, and delivered to such commissioner a bond required to be collected by such execution, with two sufficient sureties, who shall swear that they are each worth the amount of such penalty, over and above all debts, and property exempt from execution, conditioned that such defendant shall be found within the county to which such execution was directed, so as to be arrested upon any execution that may be issued Bond for stay.

	against his body upon the same judgment, within six months from the date of such bond.
Bond, where filed.	SEC. 35. Such bond shall be filed by the commissioner in the office of the clerk of the court from which such execution shall have issued, within twenty days after the same shall have been taken; and shall be delivered by such clerk to the person in whose favor the execution was issued, whenever the condition thereof shall be broken.
What stated in order to stay.	SEC. 36. In every order to stay proceedings on an execution against the body, the fact of a bond having been given according to law shall be stated; and if not so stated, such order shall be void.
Abstract books, etc., liable to execution.	SEC. 37. All abstract books, maps, plats, charts and other records owned or kept by any person, co-partnership or corporation for the purpose of furnishing abstracts or information concerning the title to lands in this State shall be liable to seizure and sale on execution in like manner as other personal property.
Gold or silver coin.	SEC. 38. Current gold or silver coin may be taken in execution, and paid to the creditor as money collected, and shall not be exposed to sale thereon.
Bills or other evidences of debt.	SEC. 39. Any bills or other evidences of debt, issued and circulated as money, may be taken in execution and paid to the creditor at their par value as money collected, if he will accept them, otherwise they shall be sold as other chattels.
Sale subject to lien.	SEC. 40. When goods or chattels shall be pledged by way of mortgage or otherwise, for the payment of money, or the performance of any contract or agreement, such goods or chattels may be levied upon and sold on execution against the person making such pledge, subject to the lien of the mortgage or pledge existing thereon; and the purchaser at such sale shall be entitled to pay to the person holding such mortgage or pledge the amount actually due thereon, or otherwise perform the terms and conditions of the pledge, at any time before the actual foreclosure of such mortgage or pledge, and on such payments or performance, or a full tender thereof, shall thereupon acquire all the right, interest and property which the defendant in execution would have had in such goods or chattels if such mortgage or pledge had not been made.
Purchaser to perform conditions of pledge.	
Executions against corporations.	SEC. 41. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in cases otherwise provided by law.
Chattels, real or personal.	SEC. 42. All chattels, real or personal, and all other goods liable to execution by the common law, may be taken and sold thereon, except as is otherwise provided by law.

Exemptions.

What property exempt.	SEC. 43. The following property shall be exempt from levy and sale under any execution, or upon any other final process of a court:
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1. All sewing machines, not exceeding one such machine for each family, all spinning wheels, weaving looms with the apparatus, and stoves put up and kept for use in any dwelling house;

2. A seat, pew or slip, occupied by such person or family, in any house or place of public worship;

3. All cemeteries, tombs and rights of burial, while in use as repositories of the dead;

4. All arms and accoutrements required by law to be kept by any person; all wearing apparel of every person or family;

5. The library and school books of every individual and family, not exceeding one hundred and fifty dollars, and all family pictures;

6. To each householder, ten sheep, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, and provisions and fuel for comfortable subsistence of such householder or family for six months;

7. To each householder, all household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars;

8. The tools, implements, materials, stock, apparatus, team, vehicle, horses, harness, or other things, to enable any person to carry on the profession, trade, occupation or business in which he is wholly or principally engaged, not exceeding in value two hundred and fifty dollars. The word team in this subdivision shall be construed to mean, either one yoke of oxen, a horse, or a pair of horses, as the case may be;

9. A sufficient quantity of hay, grain, feed and roots, whether growing or otherwise, for properly keeping for six months the animals in the several subdivisions of this section exempted from execution, and any chattel mortgage, bill of sale, or other lien created on any part of property above described, except such as is mentioned in the eighth subdivision of this section, shall be void, unless such mortgage, bill of sale or lien be signed by the wife (if he have any) of the party making such mortgage or lien.

SEC. 44. The property exempted in the eighth subdivision of the preceding section shall not be exempt from any execution issued upon a judgment rendered for the purchase money for the same property, and any sale of such property after the commencement of a suit to recover the purchase price thereof, and the filing of the notice hereinafter required, shall be null and void as against such an execution: *Provided*, The plaintiff in any suit shall file or cause to be filed with the clerk of the city, village, or township in which the owner of such property resides, a notice in which he shall state the time when such suit was commenced, the amount claimed to be due, that the suit is brought to recover the purchase money for the property, a description of the property sought to be reached, and the name of the defendant. At the time of filing such notice the party filing the same shall pay to the clerk the sum of twenty-five cents, and said clerk shall en-

Certain property not exempt from execution for purchase price.

Proviso: notice to be filed.

Fee of clerk.

Building and loan shares.	dorse upon such notice the date of filing the same and make the same record as in case of chattel mortgages.
Proviso, when not exempt.	SEC. 45. The shares held by any member, being a householder, of any association incorporated under the provisions of act number seventeen of the Public Acts of nineteen hundred one, relating to mutual building and loan associations, shall be exempted from levy and sale on execution or attachment to the amount of one thousand dollars in such shares, at the par value thereof: <i>Provided</i> , That such exemption shall not apply to any person who shall have a homestead exempted under the general laws of this State.
Inventory and appraisal.	SEC. 46. When a levy shall be made upon property of any class or species, which is exempt by law from execution to a specified amount or value, the officer levying such execution, shall make an inventory of so much of such property belonging to the person against whom the execution was issued, as shall be sufficient in the judgment of such officer, to cover the amount of such exemptions, and satisfy the execution, and cause the same to be appraised at its cash value, by two disinterested freeholders of the township or city where the property may be, on oath to be administered by him to such appraisers.
Selection of exemption.	SEC. 47. Upon such inventory and appraisal being completed the defendant in execution, or his authorized agent, may select from such inventory an amount of such property not exceeding, according to such appraisal, the amount or value exempted by law from execution; but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same for him.
Compensation of appraisers.	SEC. 48. The appraisers mentioned in the forty-sixth section of this chapter, shall be entitled to two dollars per day each for their services, and six cents per mile for traveling, in going only, for which the plaintiff in execution shall be liable to them, and the amount of their travel and fees shall be collected upon the execution.
Selection of exempt animals, etc.	SEC. 49. Whenever the defendant in an execution shall have cows, sheep, swine, or other animals or articles, some of which are exempt by law from sale on execution, and some of which are not so exempt, the officer may take all such horses, cows, sheep, swine or other animals or articles into his possession, and the defendant or his authorized agent may, immediately, on being notified of the levy, select so many thereof as are exempt by law from execution, but if the defendant be absent, or neglect to make such selection on being notified, the officer shall make the same for him.
Payment of exemption in money.	SEC. 50. Whenever a levy is made upon any article, belonging to a class or species which is exempt from execution to a specified amount or value, and the value thereof as determined by the appraisal, shall be in excess of the amount of the exemption allowed therein to the defendant in execution, levy and sale thereof may be made under the execution in the ordinary way, and unless the amount of the exemption shall

have been claimed or set off in other property or waived, the officer shall pay to the defendant in execution, the amount of such exemption, in money from the proceeds of the sale, and the balance of such proceeds shall be applied towards the satisfaction of the execution. If at the sale no bid shall be made for such property, in excess of the amount of the exemption allowed therein, such property shall not be sold, but shall be returned to the defendant. If the defendant in execution shall before such sale, pay to the officer the difference between the appraised value of such property, and the amount of the exemption therein, not to exceed the amount due on such execution with costs of such levy, to be applied upon the execution, such property shall not be sold, but shall be returned to the defendant: *Provided*, That if after such officer shall have completed the levy upon such property, the defendant in execution shall give to such officer a sufficient bond, to be approved by him, conditioned that said defendant will deliver said property to such officer or before the time of sale, pay to him the difference between the appraised value of such property, and the amount of his exemption, not to exceed the amount due on such execution with costs accrued, then such officer may permit such defendant to have possession of such property during the period intervening between the making of the levy and the time of sale.

When
property not
to be sold.

Proviso.
Possession
of property.

SEC. 51. No sale of any goods or chattels shall be made by virtue of any execution, unless at least ten days previous notice of such sale shall have been given, by fastening up written or printed notices thereof, in three public places in the city or township where such sale is to be had, and specifying the time and place where the same is to be had.

Notice of sale.

SEC. 52. No personal property shall be exposed for sale on execution, unless the same be present and within the view of those attending such sale; and it shall be offered for sale in such lots and parcels as shall be calculated to bring the highest price.

Personal
property,
how sold.

SEC. 53. If, at the time appointed for the sale of any real or personal property on execution, the officer shall deem it expedient, and for the interest of all persons concerned, to postpone the sale for want of purchasers or other sufficient cause, he may postpone the same from time to time until the sale shall be completed; and in every such case he shall make public declaration thereof at the time and place previously appointed for the sale, and if such postponement be for a longer time than twenty-four hours, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

Postpone-
ment of sale.

SEC. 54. If the highest bidder for any article at any sale on execution shall refuse to take and pay for it, the officer shall sell the same again at the same time, or within ten days thereafter, giving notice of the second sale, and he shall account for what he shall receive on the second sale, and for any

Refusal to
take property,
etc.

Recovery of damages.

damages that may be recovered of the first bidder, for any loss on the resale, as for so much received on the execution.

Growing grain or unharvested crops.

SEC. 55. When a levy shall be made upon grain while growing, or on any unharvested crops, by virtue of any execution, the officer making such levy shall file a notice of said levy in the office of the township clerk of the township, or city clerk or recorder of the city where such grain or crops are at the time of making such levy; and such clerk or recorder shall file said notice in his office, in the same manner as he is required by law to file a chattel mortgage; and such notice shall be constructive evidence to all persons of the interest of the plaintiff in the execution, and shall be entitled to the same fees therefor, to be paid by the plaintiff in the execution, and shall be collected as costs in the case, and no sale of said crops or grain shall be made until the same shall be ripe or fit to be harvested, and any levy thereon by virtue of an execution issued from a circuit court, shall be continued beyond the return day thereof, if necessary, and remain in life, and the execution thereof may be completed at any time within thirty days after such grain or other unharvested crops shall be ripe or fit to be harvested.

No sale until ripe.

Perishable property.

SEC. 56. Whenever the sheriff of any county shall, by virtue of any execution, issued by a court of record, levy upon any peaches, blackberries, raspberries, strawberries, or other perishable property, he shall proceed to sell the same at such time, place or manner as he may deem most beneficial for the interest of the defendant.

Order of court for sale.

SEC. 57. No sale shall be made under the provisions of the preceding section, except upon the written order of the court, from which process shall have been issued, authorizing such sale at such time, place and manner as said court shall decree most beneficial for the benefit of defendant: *Provided*, That the court shall direct that notice be given to the defendant, or his agent, of the time and place of such sale, and the court shall direct how the notice shall be given.

Proviso, notice to defendant, etc.

Levy on Corporate Shares, Except as Expressly Exempted by Law.

How taken.

SEC. 58. Any share or interest of any stockholder in any corporation, that is or may be incorporated under the authority of any law of this State, unless expressly exempted by law, may be attached or taken in execution and sold in the manner hereinafter provided.

Certificate of shares to be furnished.

SEC. 59. The officer of any company who is appointed to keep a record or account of the shares or interest of the stockholders therein or in whose office there is required to be kept any list or statement showing the stockholders of such corporation and the number of shares held by each or their interest therein, shall upon exhibiting to him the attachment or execution be bound to give the officer a certificate of the number of shares or amount of the interest held by the defendant named in such attachment or the judgment debtor.

SEC. 60. Whenever any corporate shares of stock shall be attached or taken in execution, the officer shall leave a copy of the attachment or execution certified by him with the clerk, treasurer, cashier, or agent of the corporation if there be any such officer, and if not then with any officer or person who has, at the time, the custody of the books and papers of the corporation within this State. No attachment or levy upon shares of stock for which a certificate is outstanding, shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined, or restrained.

Copy of execution, etc., to be left with clerk, etc.

SEC. 61. Any court of law or equity from which any attachment or execution may have issued, shall have full power and authority upon motion, and without notice, to make an order restraining the transfer of any such shares of stock, and upon the service of a certified copy of such order, the same shall be as effectual for all purposes as though it were an injunction issued by a court of equity. This section shall not be construed to in any way abrogate or limit the jurisdiction of courts of equity as heretofore existing.

Restraint of transfer of stock.

SEC. 62. A copy of the execution and the return thereon, certified by the officer executing the same, shall, within fourteen days after the sale be left with the officer of the company whose duty it may be to keep a record of the transfer of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor, and for recording the transfer.

Purchaser of shares entitled to certificate.

SEC. 63. If the shares or interest of the judgment debtor shall have been attached in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which shall have accrued after the levying of the attachment.

Dividends.

SEC. 64. If an execution shall be returned satisfied in whole or in part, by the sale of any property which shall afterwards appear not to have belonged to the judgment debtor, or not to have been liable to execution, and if any damages shall be recovered against the judgment creditor, or the officer who served the execution, on account of the seizure and sale of the property, the court may on the application of such judgment creditor, order a new execution to be issued on such judgment, for the amount then remaining justly and equitably due thereon.

When new execution to issue.

Executions Against Corporations Authorized to Receive Toll.

SEC. 65. When any judgment shall be recovered against any turnpike or other corporation authorized to receive toll, the franchise of such corporation, with all the rights and privileges thereof, together with all their corporate property, both real and personal, may be taken on execution, and sold at public action.

Franchise, etc., of toll companies.

Proceedings of officer.	SEC. 66. The officer having such execution against any corporation mentioned in the preceding section, shall, thirty days, at least, before the day of sale of the franchise, or other corporate personal property, give notice of the time and place of sale, by posting up a notice thereof in any township in which the clerk, treasurer, or any one of the directors of such corporation may dwell, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of the aforesaid officers may dwell, if any such there be, and if no newspaper be published in any such county, then in a paper published in an adjoining county.
Notice.	
Publication.	
Adjournment of sale.	SEC. 67. The officer who may levy any execution, as prescribed in the preceding section, may adjourn the sale from time to time as may be necessary, until the sale shall be completed.
Who considered highest bidder for franchise.	SEC. 68. In the sale of the franchise of any corporation, the person who shall satisfy the execution, with all legal fees and expenses thereon, and shall agree to take such franchise for the shortest period of time, and to receive during that time all such toll as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.
What transferred by officer's return.	SEC. 69. The officer's return on such execution shall transfer to the purchaser all the privileges and immunities which by law belong to such corporation, so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll houses and gates belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive all the toll which may accrue during the time limited by the terms of his purchase, in the same manner, and under the same regulations, as such corporation was before authorized to demand and receive the same.
Delivery of toll houses, etc.	
Receipt of toll.	
Recovery of penalties for injury to franchise.	SEC. 70. Any person who may have purchased, or shall hereafter purchase under the provisions of this chapter the franchise of any turnpike or other corporation, and the assignees of such purchaser, may recover, in an action on the case, any penalties imposed by law for an injury to the franchise, or for any other cause, and which such corporation would have been entitled to recover during the time limited in the said purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.
Powers, duties and liabilities of corporation.	SEC. 71. The corporation whose franchise shall have been sold as aforesaid shall, in all other respects retain the same powers, and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures, as before such sale.

SEC. 72. Such corporation may, at any time within three months after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with interest thereon, but without any allowance for the toll which he may have received; and upon such payment or tender, the said franchise, and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made. Redemption.

Exemption of Homesteads.

SEC. 73. A homestead, consisting of any quantity of land not exceeding forty acres, and the dwelling house thereon and its appurtenances, to be selected by the owner thereof, and not included in any recorded town plat or city or village, or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one lot, being within a recorded town plat or city or village, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of this State, not exceeding in value fifteen hundred dollars, shall not be subject to forced sale on execution, or any other final process from a court, for any debt or debts growing out of or founded upon contract, either express or implied. This section shall be deemed and construed to exempt such homestead in the manner aforesaid during the time it shall be occupied by the widow or minor child or children of any deceased person, who was, when living, entitled to the benefits of this section. Homestead, of what it consists.

SEC. 74. Such exemption shall not extend to any mortgage thereon lawfully obtained, but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same, unless such mortgage shall be given to secure the payment of the purchase money or some portion thereof. Not subject to sale on execution.

SEC. 75. Whenever a levy shall be made upon, or any circuit court commissioner shall advertise for sale under any decree upon the foreclosure of any mortgage not valid as against the homestead and so stated in such decree, the lands and tenements of a householder whose homestead has not been platted and set apart by metes and bounds, such householder shall notify the officer at the time of making such levy or at the time of such advertising for sale what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone shall be subject to sale under such levy or decree. If at the time of such levy or advertising for sale such householder shall fail or neglect to notify the officer making the levy or advertising such property for sale, what he regards as his homestead with a description thereof, the officer making the levy or advertising such property for sale, shall call upon such householder to make his selection of a homestead out of said land, describing the same minutely. If after such notice the owner of the land shall fail to select his homestead, such officer may select the home- Alienation invalid without wife's signature.

Proviso,
selection
by officer.

stead out of said land for him, and the remainder over and above that part selected by the officer or by the owner of the land, as the case may be, alone shall be subject to sale under such levy or decree: *Provided*, That in making this selection of the homestead out of the lands levied upon or advertised for sale, if such selection is made by the officer making the levy or advertising for sale, he shall select lands in compact form, which lands so selected by him as the homestead of the owner shall include the dwelling house and its appurtenances thereon.

Survey.

SEC. 76. If the plaintiff in execution or in said decree shall be dissatisfied with the quantity of land selected and set apart as aforesaid either by the owner of the land or by the officer making the levy or advertising the land for sale, he shall cause the same to be surveyed, beginning at a point to be designated by the owner or by the officer making the levy or advertising for sale, and set off land in compact form including the dwelling house and its appurtenances, to the amount specified in the first section of this chapter; and the expense of such survey shall be chargeable on the execution or decree and collected thereupon.

Sale of
property.

SEC. 77. After the survey shall have been made, the officer may sell the property levied upon or included in the decree, and not included in the set-off, in the same manner as provided in other like cases for the sale of real estate; and in giving a deed of the same he may describe it according to the original levy or as described in the decree, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity as set off as aforesaid.

Description
in deed.

House on
leased land.

SEC. 78. Any person owning and occupying any house on land not his own, and claiming said house as a homestead shall be entitled to the exemption aforesaid.

Not exempt
from tax-
ation, etc.

SEC. 79. Nothing in this chapter shall be considered as exempting any real estate from taxation or sale for taxes.

When
property
exceeds \$1500
in value.

SEC. 80. Whenever the homestead of any debtor in any such case, shall exceed in value the amount of fifteen hundred dollars, the debtor shall not for that reason lose the benefit intended to be secured to him or her by this chapter; but in all such cases, when in the opinions of the creditors or officer holding an execution or decree as aforesaid, against such householder, the premises claimed by him as exempt are worth more than fifteen hundred dollars, such officer shall summon six persons qualified to act as jurors, who shall upon oath, to be administered to them by said officer, appraise the said premises; and in case the value thereof shall be more than fifteen hundred dollars, and cannot be divided, they shall make and sign an appraisal of its value, and deliver the same to the officer, who shall deliver a copy thereof to the debtor, or to some of his family of suitable age to understand the nature thereof, with a notice thereto attached, that unless the said debtor shall pay the said officer the surplus, over and above the fifteen hundred dollars, or the amount due on said

execution or decree, within sixty days thereafter, that such premises will be sold.

SEC. 81. In case such surplus, or the amount due on said execution or decree, shall not be paid within the sixty days, it shall be lawful for the officer to proceed to advertise and sell the said premises, and out of the proceeds of said sale to pay such debtor the said sum of fifteen hundred dollars, which shall be exempt from execution for one year thereafter, and apply the balance on said execution: *Provided, however,* That no sale shall be made in the case last mentioned, unless a greater sum than fifteen hundred dollars shall be bid therefor, in which case the officer may return said execution for want of property, or report the facts to the court in which said decree was rendered, as the case may require.

Sale of premises.

Proviso, return of property.

SEC. 82. All the real estate of any debtor, including legal and equitable interests in lands acquired by the parties to contracts for the sale and purchase of lands, whether in possession, reversion or remainder, including lands fraudulently conveyed, with intent to defeat, delay or defraud his creditors, and the equities and rights of redemption hereinafter mentioned, shall be subject to the payment of his debts, liabilities and obligations, and may be levied upon and sold on execution as hereinafter provided. And when any sale, by virtue of any execution, shall become absolute, as hereinafter provided, the purchaser at such sale shall acquire all the rights and interests that the debtor had in and to the lands so sold, at the time of the levy by virtue of the execution; or if the levy was made by virtue of an attachment, said purchaser shall acquire all the rights and interests that the debtor had in and to the lands so sold at the time of the levy by virtue of said attachment, including in either case the right to enforce specific performance of any contract hereinbefore mentioned, upon performing the conditions thereof, as stipulated therein by said debtor: *Provided,* That this section shall not be construed so as to make liable to levy and sale on execution any amount of land not exceeding the amount now exempted by law from levy and sale on execution, and which would be exempt from levy and sale on execution, if owned by the debtor occupying the same. That in case of a levy upon the equitable interest of a judgment debtor, the judgment creditor, may before the sale, institute proceedings in aid of said execution, to ascertain and determine the rights and equities of said judgment debtor, in the premises so levied upon, and that in case of a sale of said premises, without having ascertained and determined the interest of said judgment debtor in the premises so levied upon and sold, he shall within one year institute proceedings to ascertain and determine the same, and to settle the rights of the parties in interest therein.

All real estate, etc., subject to payment of debts.

Rights acquired upon execution sale.

Proviso, construction of section.

Ascertainment of rights of judgment creditor.

SEC. 83. No levy by execution on real estate shall be valid against bona fide conveyances made subsequent to such levy, until a notice thereof, containing the names of the parties to

Notice of levy to be filed with register of deeds.

the execution, a description of the premises levied upon, and the date of such levy, shall be filed by the officer making the same, in the office of the register of deeds of the county where the premises are situated, and such levy shall be a lien thereon from the time when such notice shall be so deposited; and the lien thus obtained, shall, from the filing of such notice, be valid against all prior grantees and mortgagees of whose claims the party interested shall not have actual nor constructive notice. And such register shall thereupon enter on such notice a minute of the time of receiving the same, and shall record the same in a book to be kept for that purpose, and shall make an index to such record in such manner as shall be convenient for public reference, of the names of parties to the execution, as stated in said notice, and such officer shall receive for making and filing the notice as aforesaid, the sum of fifty cents, and such register of deeds shall receive for recording the same the same fees as are allowed by law for recording notices of the pendency of suits in chancery, which fees the said officer shall add to the costs to be collected by such execution, and shall in like manner collect the same; and when such execution shall be fully paid, satisfied or discharged, it shall be the duty of the clerk of the court that issued such execution to give to the defendant a certificate, under the seal of the court, that the same is satisfied or discharged, and such certificate may be recorded in the same manner as is provided for the recording of such notice.

Entry of time of receiving.

Index.

Fees.

Certificate of satisfaction of execution.

When lien of levy to cease.

SEC. 84. Each and every levy by execution on real estate heretofore or hereafter made shall cease to be a lien on such real estate, and shall become and be void at and after the expiration of five years from the making of such levy, unless such real estate be sooner sold thereon.

Manner of Selling Real Estate.

Notice of sale, how given. **SEC. 85.** Previous to the sale of any real estate taken on execution, notice of the time and place of holding such sale shall be given as follows:

1. A written or printed notice thereof shall be fastened up in three public places in the township or city where such real estate shall be sold, six weeks previous to the sale, and if such sale be in a township or city different from that in which the premises to be sold are situated, then such notice shall also be fastened up in three public places in the township in which the premises are situated;

2. A copy of such notice shall be published once in each week, for six successive weeks, in a newspaper printed in the county in which such real estate is to be sold, if there be one;

3. If there be no newspaper printed in such county, then such notice shall be published once in each week, for six successive weeks, in some newspaper printed in an adjoining county.

The sheriff or other officer making such sale shall have power to adjourn the same from time to time, for a reasonable cause, and if such adjournment be for more than one week he shall give notice thereof in the newspaper in which the original notice was printed, and immediately following the same, and shall continue a publication of such notices during the time for which such sale shall be adjourned, but shall not be required to post any notice of such adjourned sale except at the place where said sale is to be made.

Adjournment
of sale.

SEC. 86. In every such notice, the real estate to be sold shall be described with common certainty, by setting forth the name or number of the township in which it is situated, and the number of the lot, or by some other appropriate description of the premises.

Description
of real estate.

SEC. 87. The sale of real estate by virtue of any execution shall be at public vendue, between the hour of nine o'clock in the morning and the setting of the sun, at the court house, or place of holding the circuit court, in the county in which such estate is situated.

When and
where sale to
be held.

SEC. 88. Any officer who shall sell any real estate, without the previous notices herein directed, or otherwise than in the manner herein prescribed, shall be liable therefor to the party injured, in the sum of five hundred dollars damages, in addition to any actual damages which such party may prove on the trial of an action brought for the recovery of the same.

Penalty for
sale otherwise.

SEC. 89. If any person shall take down or deface any notice of a sale of real estate, put up by any officer, previous to the day of sale therein specified, unless upon satisfaction of the execution by virtue of which such notice shall have been given, or upon the consent of the party suing out such execution, and of the defendant therein, such person shall be liable therefor to the party in whose favor such execution was issued, in the sum of fifty dollars damages.

Removal or
defacement
of notice.

SEC. 90. The omission of any officer to give the notice of sale required in this chapter, or the taking down or defacing any such notice when put up, shall not affect the validity of any sale made to a purchaser in good faith, without notice of such omission, taking down or defacing.

Liability.

Omission or
defacement
not to in-
validate sale.

SEC. 91. The sheriff or other officer to whom any execution shall be directed, and the deputies of such officers, shall not directly or indirectly, purchase or be interested in the purchase of any real estate, at any sale by virtue of such execution.

Officers not
to purchase.

SEC. 92. When any real estate offered for sale by virtue of any execution, shall consist of several known lots, tracts, or parcels, such lots, tracts, or parcels, shall be separately exposed for sale, and the defendant may direct which piece or parcel shall be first exposed for sale; and no more of such tracts or parcels shall be exposed for sale than shall appear necessary to satisfy the execution, with the costs and expenses of such sale.

Sale by lots,
tracts, etc.

**Certificates
of sale.**

SEC. 93. Upon the sale of any real estate by virtue of an execution, the officer making the same shall make and subscribe as many certificates as may be necessary, of such sale, containing:

1. A particular description of the premises sold;
2. The price bid for each distinct lot or parcel sold;
3. The consideration money paid for each lot or parcel; and
4. The time when such sale shall become absolute, and the purchaser or purchasers will be entitled to a deed, as hereinafter provided, and shall indorse on each of said certificates the rate of interest borne by the judgment upon which said execution issued.

Where filed.

SEC. 94. One of the said certificates shall, within ten days after such sale, be filed by the officer making the sale, in the office of the register of deeds of the county in which the sale was made, and one such certificate shall be delivered to each purchaser at said sale.

**Record of
certificate.**

SEC. 95. Such certificate shall be recorded in a book to be kept for that purpose by the register of deeds, in whose office the same are filed, and the original certificate, or the record thereof, or a transcript of such record, duly certified by the register of deeds, shall be prima facie evidence of the facts therein set forth, and of the regularity of the sale and all proceedings in the cause anterior thereto.

Redemption.

SEC. 96. Within one year from the time when such sale shall have been made, the real estate so sold or any distinct lot, tract or portion that may have been separately sold, may be redeemed by payment to the purchaser, his personal representatives or assigns, or to the officer who made such sale, or to the register of deeds in whose office such certificate is filed, for the use of such purchaser, of the sum of money which was bid on the sale of such lot or tract, together with the interest on that sum from the time of sale, computed at the rate per cent per annum borne by the judgment under which such sale was made.

**By whom
made.**

SEC. 97. Such redemption may be made:

1. By the person against whom the execution was issued, and whose right and title were sold in pursuance thereof; or
2. If such person be dead, by his devisee of the premises sold, if the same shall have been devised; and if the same shall not have been devised, by the executor or administrator with the approbation of the judge of probate, or by the heirs of such person; or
3. By any grantee of such person, who shall have acquired an absolute title by deed, sale under mortgage, or under an execution, or by any other means, to the premises sold, or to any lot, tract, parcel or portion which shall have been separately sold;
4. By the purchaser of the title and right of redemption of the person against whom the execution issued.

SEC. 98. Any heir or devisee of the person against whom the execution was issued, and any grantee of such person who shall have acquired an absolute title to a portion of the estate sold, or to a portion of any lot, tract or parcel that shall have been separately sold, or the executor or administrator of such person, with the approbation of the judge of probate, may redeem the lot, tract or parcel so sold, on the same terms and in the same manner as if he were grantee of the whole lot, tract or parcel, and shall have the same remedy to enforce contribution from those who shall own the residue of such lot, tract or parcel, as if the sum required to be paid by him to effect such redemption had been collected by a sale of the portion belonging to such grantee.

Redemption
by heir,
devisee, etc.

SEC. 99. If there be several persons having undivided shares, as joint tenants, or tenants in common, in the premises sold, or in any particular lot or tract sold, each person having such title may redeem the share or interest belonging to him, by paying to the purchaser, or to the officer, as herein directed, a sum that will bear the same proportion to the whole purchase money bid for such premises, or for such particular lot or tract, as the share proposed to be redeemed bears to the whole number of shares of such premises, or lot or tract, together with the interest on such sum.

Joint tenants,
tenants in
common, etc.

SEC. 100. Upon such payment being made by any person so entitled to redeem any real estate so sold, as provided in the preceding sections of this chapter, the sale of the premises so redeemed, and the certificate of such sale, to the extent of the premises or shares so redeemed, shall be null and void.

Sale and
certificate
avoided by
redemption.

SEC. 101. In case the persons entitled as hereinbefore provided, shall omit to redeem the premises so sold, or any part of them, within the year above prescribed, then the interest vested in the purchaser by such sale may be acquired within three months after the expiration of such year, by the persons, and on the terms hereinafter prescribed.

Interest of
purchaser,
how acquired.

SEC. 102. Any creditor of a person against whom such execution issued, having in his own name, or as assignee, representative, trustee or otherwise, a decree in chancery, or a judgment at law, under which execution shall have been issued and levied upon the real estate so sold, or a decree which shall be a lien without execution and levy, at any time before the expiration of fifteen months from the time of such sale, by paying the sum of money which was paid on the sale of such premises, together with the interest thereon, computed at the rate borne by the judgment under which such sale was made, from the time of such sale, shall thereby acquire all the rights of the original purchaser, subject to be defeated in the manner hereinafter mentioned.

Creditor, how
may acquire
rights of
purchaser.

SEC. 103. If the execution so levied as contemplated in the last section, or such decree be a lien upon any lot, tract or parcel that shall have been separately sold, the creditor having the same by paying as before provided the sum which shall have been bid for such lot, tract, or parcel, with interest

Rights
acquired
by creditor.

as above mentioned, shall thereby acquire all the rights of the original purchaser to such lot, tract, or parcel, subject to be defeated as hereinafter provided.

Execution
lien on part
of lot.

SEC. 104. If the execution so levied, or such decree, be a lien only on a specific portion of a lot, tract or parcel so sold, the creditor having the same may acquire the title of the purchaser to the whole of such lot, tract or parcel, in the same manner as if such lien extended to the whole.

On undivided
interest.

SEC. 105. Any such creditor having such decree or execution so levied, which is a lien upon any undivided share or interest in any real estate sold under execution, may, within the same time, on the same terms, and in the same manner, acquire the title of the original purchaser to such share or interest by paying such part of the whole purchase money of such real estate as shall be in just proportion to such share or interest.

Purchase by
other
creditors.

SEC. 106. Whenever any such creditor shall have acquired the title of the original purchaser, pursuant to the foregoing provisions, any other creditor who might have acquired such title according to such provisions may become a purchaser thereof from the first creditor who acquired the same, upon the following conditions:

1. By reimbursing to such first creditor, his personal representatives or assigns, the sum which may have been paid by him to acquire such title, together with interest thereon, computed as hereinbefore provided, from the time of such payment to the time of such reimbursement;

2. If the levy under the execution or decree, by virtue of which the first creditor acquired the title of the original purchaser, be prior to the levy or decree of such second creditor, then such second creditor shall also pay to such first creditor the amount due on his judgment or decree;

3. But if such levy under the execution or the decree of the first creditor, at the time of his acquiring the title of the original purchaser, shall have ceased to be a lien as against such second creditor, it shall not be necessary to pay the amount thereof.

Third and
other
creditors.

SEC. 107. In the same manner any third or other creditor, who might, according to the foregoing provisions, acquire the title of the original purchaser, may become a purchaser thereof, from the second, third, or any other creditor, who may have become such purchaser from any other creditor, upon the same terms and conditions specified in the preceding section.

Original
purchaser
being
creditor.

SEC. 108. If the original purchaser of any premises so sold, shall also be a creditor of the defendant against whom the execution issued, and as such might acquire the title of any purchaser, according to the preceding provisions, he may avail himself of his decree or judgment in the same manner, and on the same terms herein prescribed, to acquire the title which any creditor may have obtained.

Right of
execution
plaintiff.

SEC. 109. The plaintiff under whose execution any real estate shall have been sold, shall not be authorized to acquire

the title of the original purchaser, or of any creditor, to the premises so sold, by virtue of the decree or judgment on which such execution issued; but if he have any other decree or judgment which would entitle him to acquire such title, according to the preceding provisions, he may avail himself of such other decree or judgment, in the same manner, and on the same terms as any other creditor.

SEC. 110. The sums required to be paid by the foregoing provisions, to acquire the title of the original purchaser, or to become a purchaser from any creditor, may be paid to such purchaser or creditor, his representatives or assigns, or to the officer who made the sale, or to the register of deeds in whose office the certificate of sale is filed, for the use of the purchaser or creditor entitled to the same. Payments required, to whom made.

SEC. 111. Upon such payment being made, the title of the original purchaser shall be thereby transferred to the creditor acquiring the same pursuant to the foregoing provisions, and from such creditor to any other creditor becoming a purchaser thereof as hereinbefore provided. Effect of payment.

SEC. 112. To entitle any creditor to acquire the title of the original purchaser, or to become a purchaser from any other creditor pursuant to the preceding provisions, he shall present to and leave with such purchaser or creditor, or the officer who made the sale, or with said register, the following evidence of his right: Evidence of right of creditor to purchase.

1. A certified copy of the judgment or decree under which he claims the right to purchase;

2. A true copy of all the assignments of such judgment or decree, which are necessary to establish his claim, verified by his affidavit, or the affidavit of some witness thereto;

3. An affidavit by such creditor, his agent or attorney, of the true sum due on such judgment or decree, at the time of claiming such right to purchase.

SEC. 113. The right and title of the person against whom the execution was issued, to any real estate which shall be sold thereby, shall not be divested by such sale, until the expiration of fifteen months from the time of such sale; but if such real estate shall not be redeemed as herein provided, and a deed shall be executed in pursuance of a sale, the grantee in such deed shall be deemed vested with the legal estate from the time of the sale on such execution, for the purpose of maintaining an action for any injury to such real estate. When legal estate to vest.

SEC. 114. If at any time after a sale of real estate on execution, and before a deed shall be executed in pursuance thereof, the defendant in such execution or any other person, shall commit any waste thereon or shall remove therefrom any buildings, fences, or other fixtures belonging to the land, and which would pass to the grantee by a deed of conveyance of the same, the purchaser of such real estate, or any creditor or other person having acquired the rights of such purchaser, may have and maintain against the person doing such injury, and against any other person who shall have any Actions for waste, etc.

such buildings, fences or fixtures in his possession after such removal, the same actions which such purchaser, creditor or other person might sustain, if he were the absolute owner of the premises so sold.

For whose
benefit
actions
prosecuted.

SEC. 115. After the commencement of any such action as mentioned in the preceding section, if any other creditor shall acquire the rights of the purchaser at such sale in pursuance of the provisions of this chapter, such action shall not thereby be abated or in any way affected; but the same may be prosecuted in the name of the plaintiff therein to final judgment, for the benefit of the person acquiring such rights after the commencement of the action, if he shall choose to prosecute the same, and if not, such plaintiff may continue the same for his own benefit.

Conveyance,
when and to
whom made.

SEC. 116. After the expiration of fifteen months from the time of the sale of any real estate, if any part of the premises sold shall remain unredeemed by the person against whom the execution issued, or by any person entitled to redeem the same within one year from the time of such sale, according to the provisions of this chapter, the officer making such sale, or his successor in office, shall complete the same, by executing, in due form of law, a conveyance of the premises so remaining unredeemed, either to the original purchaser or to the creditor who may have acquired the title of such original purchaser, or to the assigns of such purchaser, or to the creditor who may have purchased such title from any other creditor, as the case may be; which conveyance shall be valid and effectual to convey all the right, title and interest which was sold on such execution.

Conveyance to
executor, etc.

SEC. 117. In case the person who, by the provisions of the preceding sections, would be entitled to a conveyance of any real estate sold by virtue of an execution, shall die before the execution of the conveyance, the officer shall execute and deliver such conveyance to the executor or administrator of the person so deceased: *Provided*, That in any case under this or the preceding section, where the rights of the person or persons entitled to such real estate, or any interest therein, shall render it necessary, the circuit court of the county in which the officer who made the sale resided, on a hearing of the parties interested, properly brought before it by bill or petition, may direct the conveyance to be made to the person or persons equitably entitled thereto, in such manner as shall be just; and such conveyance shall have the same effect as provided in the preceding section.

Proviso,
conveyance
to person
equitably
entitled.

Real estate to
be held
in trust.

SEC. 118. The real estate so conveyed to any such executor or administrator shall be held in trust for the use of the heirs of such deceased person, subject to the dower of his widow, if there be any; but the same may be sold for the payment of debts and legacies, in the same manner as lands whereof the deceased died seized.

When
certificate
holder en-
titled to deed.

SEC. 119. When the premises mentioned in any sheriff's certificate of sale of real estate under execution shall not be

redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor at any time within ten years from the expiration of the time of redemption. When such deed is not taken and recorded within the time limited by this chapter the certificate of purchase shall become and be null and void.

SEC. 120. If, after any sale of real estate, made as herein prescribed there shall remain in the hands of the officer any surplus money after satisfying the writ or writs of execution on which such real estate was sold, with the interest thereon, the officer shall pay over such surplus to the judgment debtor or his legal representatives, on demand.

Surplus, how disposed of.

SEC. 121. All rights of redeeming mortgaged real estate and real estate sold on execution, may be sold on execution in the manner herein prescribed for the sale of other real estate on execution, excepting in the case hereinafter specified; and such equity of redemption may be redeemed, and the rights of any purchaser may be acquired, in the same manner, and upon the same terms and conditions as other real estate sold on execution.

Sale and redemption of equities.

SEC. 122. If the purchaser of any such equity of redemption, or any creditor having acquired the rights of such purchaser, shall pay the debt due on the mortgage, or the amount of any sale of said premises sold on execution, or any part thereof, the amount so paid on the mortgage or execution sale shall be paid, with interest, to such purchaser or creditor, in redeeming the premises, or purchasing the rights of such purchaser or creditor, as the case may be according to the provisions of this chapter.

Payment of mortgage, etc., by purchaser of equity.

SEC. 123. The lawful fees and charges of the sale upon any execution in the manner prescribed in this chapter, shall, in all cases, be added to the amount due on the execution, and be considered as a part thereof for all the purposes mentioned in this chapter.

Fees and charges added.

SEC. 124. When a judgment shall be recovered for a debt secured by mortgage of real estate, or for any part of such debt, it shall not be lawful for the sheriff or other officer to sell the equity of redemption of the mortgagor, his heirs or assigns in such estate, by virtue of any execution upon such judgment.

When equity not to be sold.

SEC. 125. Whenever any execution against the property of the defendant shall be issued upon such judgment as is mentioned in the preceding section, the plaintiff or his attorney shall endorse on such execution a brief description of the premises mortgaged, with a direction to the officer not to levy such execution upon the said premises, or any part thereof.

Description of premises, indorsement of.

SEC. 126. If such execution shall not be collected of the other property of the defendant, the officer shall return the same unsatisfied, in whole or in part, as the case may require.

Return unsatisfied.

SEC. 127. Before any assignee, or his personal representative, shall be entitled to a deed under the provisions of this

Assignments to be acknowledged and recorded.

chapter, every assignment under which he claims title, shall be executed and acknowledged or proved, in the same manner that deeds are required to be executed and acknowledged or approved, to entitle the same to be recorded, and such assignee shall cause the same to be recorded in the office of the register of deeds, in the county where the real estate so sold is situated.

Recovery by
purchaser
in case of
eviction.

SEC. 128. If the purchaser of any real estate, sold by virtue of an execution, his heirs or assigns, shall be evicted from the possession of such real estate, or if in an action for the recovery thereof, judgment shall be rendered against him or them, in consequence:

1. Of any irregularity in the proceedings concerning such sale; or

2. Of the judgment upon which such execution issued being vacated or reversed;

such purchaser, his heirs or assigns, may recover of the party for whose benefit such real estate was sold, the amount paid on the purchase thereof, with interest.

Further
execution
in case of ir-
regularity, etc.

SEC. 129. The party for whose benefit such real estate was sold, and his personal representatives, upon such recovery being had against him in consequence of any irregularity in the proceedings concerning the sale, may have further execution upon the judgment by virtue of which such sale was made, to levy the amount paid on such sale, with interest.

When valid
and effectual.

SEC. 130. Such judgment shall be deemed valid and effectual for the purpose specified in the preceding section, against the defendant therein, his personal representatives, heirs and devisees, but not against any purchaser in good faith, or any incumbrancer by mortgage, judgment or otherwise, whose title or incumbrance shall have accrued before the levy of such further execution.

Contribution.

SEC. 131. When lands and tenements, in the hands of several persons, shall be liable to satisfy any judgment, and the whole of such judgment, or more than a due proportion thereof, shall be levied upon the lands of one or more of such persons, the persons so aggrieved, or their personal representatives, may compel a just and equal contribution by all the persons whose lands and tenements ought to contribute to the satisfaction of such judgment.

Order of
contribution.

SEC. 132. Such lands and tenements shall be liable to contribution in the following order:

1. If they were conveyed by the defendant in the execution, they shall be liable in succession, commencing with the lands last conveyed;

2. If they were sold under execution against the defendant, they shall also be liable in succession, commencing with the lands sold under the last and youngest judgment;

3. If there be lands so liable, which were conveyed by the defendant in the execution, and also lands which have been sold under execution against such defendant, they shall

respectively be liable in succession, according to the order hereinbefore prescribed.

SEC. 133. If a bill be filed in chancery to enforce such contribution, the person aggrieved shall be entitled to use the original judgment, and by virtue thereof, to pay the amount which ought to be contributed by the lands and tenements subject to such judgment; and for that purpose, such judgment shall remain a lien and charge upon such lands and tenements, for the term of five years after a certified copy thereof shall have been filed and entered in the office of the register of deeds in the county where the lands are situated, to the extent of the sum which ought to be so contributed, notwithstanding such sum or any part thereof, may have been paid by the party seeking such contribution.

Enforcement
of contribu-
tion in
chancery.

SEC. 134. But such original judgment shall not remain a lien upon any lands, nor shall they be subject to an execution as herein provided, unless the person aggrieved shall file an affidavit with the register of deeds in whose office a certified copy of such judgment shall have been filed and entered, stating the sum paid, and his claim to use such judgment for the reimbursement thereof, or of some portion of the same.

Lien of
original
judgment.

SEC. 135. On the filing of such affidavit, the register of deeds shall make an entry in the margin of the entry of the certified copy of such judgment, stating the sum so paid, and that such judgment is claimed to be a lien to that amount.

Entry in
margin of
copy by
register
of deeds.

SEC. 136. Any creditor having a mortgage of any lands sold on execution, his representatives or assigns, where the mortgage was executed subsequent to the levy in pursuance of which the mortgaged premises were sold, shall have the right to acquire the interest vested in the purchaser at the sale, on the terms provided in section one hundred two of this chapter, for creditors having a decree in chancery, or judgment at law.

Right of
mortgagee of
lands sold.

SEC. 137. The interest of the original purchaser acquired by such mortgagee, his representatives or assigns, shall be subject to be defeated in the same manner as the same right acquired by other creditors, except that unless an execution has been issued on his judgment or decree, and a levy made by virtue thereof on the mortgaged premises, previous to the execution of the mortgage, any creditor acquiring the right of the original purchaser from such mortgagee, his representatives or assigns, shall pay to said mortgagee, his representatives or assigns, the amount due on the mortgage, and be thereby subrogated to the rights of the owner thereof; such creditor shall also reimburse, with interest, the amount paid by such mortgagee, his representatives or assigns, to acquire the rights of the original purchaser.

Interest of
original
purchaser,
how defeated.

SEC. 138. Creditors shall be allowed to acquire the right of the original purchaser in the order of their liens.

Rights of
original
purchaser,
how acquired.

SEC. 139. When any judgment debtor shall have or own an undivided interest or estate as tenant, in common or

Tenant in
common.

otherwise, with the same parties in several pieces or parcels of land, the sheriff to whom any execution issued on any judgment against said debtor may be directed, may levy said execution upon any such undivided interest or estate, and in case of an existing levy thereon may advertise and sell, as a single parcel, the interest of such judgment debtor in any or all of such undivided and unpartitioned tracts or parcels in his bailiwick, and the same may be redeemed only on payment of the sum bid, with interest at the rate borne by the judgment under which such sale was made. Certificates, setting forth a description of the premises in which such interest may have been sold, the sum bid, and the time when such sale will become absolute and the purchaser entitled to a deed, shall be made, delivered to the purchaser, and filed in the office of the register of deeds, in the same manner and with like effect as in other cases of sales of real estate on execution.

Payments
on contracts
may be
deposited
with register
of deeds.

SEC. 140. When any real estate shall be sold on execution which shall have been previously contracted to be sold by the owner thereof in writing, by a valid agreement, and when such agreement in writing shall be existing at the time of such sale, it shall be lawful for the person holding such contract to make any payment thereon which may become due previously to the expiration of the time for the redemption of said real estate, and previously to a redemption thereof by the debtor, to deposit such payment with the register of deeds, in whose office the certificate of sale is required to be filed, taking such register's receipt therefor, and in case such premises are redeemed by the debtor or his assignee, the payment or payments so deposited, shall be by said register delivered to said debtor or his assignee; but in case such real estate shall not be so redeemed, the payment or payments shall be delivered to the person acquiring said real estate, under such sale, and such payment so made and deposited with said register, shall have the same effect for the benefit of the person so making the same under his said contract, as if made to either of said parties entitled thereto when the same was deposited with said register.

Payments
to person
acquiring
real estate.

Leasehold
interests.

Proviso,
farm lease;
crops.

SEC. 141. Leasehold interests in lands shall be subject to levy and sale upon execution. Proceedings to and including the sale shall be the same in all respects as in the case of real estate sold on execution: *Provided*, That if such leasehold consists of a farm lease, the debtor shall have the right to select from the crops growing on said farm, any of such crops to the extent provided for in subdivisions six, eight and nine of section forty-three of this chapter as exemptions.

Effect of
filing of
notice
of levy.

SEC. 142. Upon the filing of such notice of levy, it shall be notice of all the rights acquired by the plaintiff and purchaser at the sale, and the plaintiff in execution or his attorney, shall be thereafter entitled to reasonable notice from the lessor in case such lessor intends to forfeit the lease for any default made by the lessee, or person claiming under him, to the end that such plaintiff shall have a reasonable oppor-

tunity to comply with the terms of the lease and save a forfeiture; and in case the plaintiff or execution purchaser is compelled to pay any rent due at the date of sale on execution or previous thereto, no redemption shall be allowed until the amount so paid is refunded to the plaintiff or execution purchaser, with interest, in addition to the amount for which such leasehold interests may be sold on execution.

SEC. 143. When such leasehold interest is sold on execution the purchaser will be thereupon entitled to all the rights and privileges of the defendant in and to the leasehold premises, and may immediately obtain possession thereof from such defendant or person holding under him in the manner provided in the case of an unlawful detainer of lands. Rights of purchaser.

SEC. 144. The officer making the sale shall, within ten days thereafter, execute to the purchaser a conveyance of the leasehold interest, which conveyance, if the unexpired term of such lease then exceeds three years, shall be by deed duly executed and acknowledged, as in the case of a conveyance of real estate, which deed shall be deposited with said register of deeds, but shall not be recorded until the expiration of one year after the day of sale, and the officer making the sale shall endorse on such deed the date on which it will be entitled to record. Conveyance.

SEC. 145. In all cases where the unexpired term of the lease exceeds three years at the date of sale on execution, the defendant shall have one year after such sale in which to redeem from the purchaser or his assigns the interest so sold on execution, and upon such redemption being duly made, said deed shall become void, and the defendant shall be entitled to repossess, recover, and enjoy the premises from the execution purchaser or assigns. Such redemption may be made in the manner provided by law for the redemption of real estate sold on execution. Redemption.

SEC. 146. The term leasehold interest, wherever used in this chapter, shall be deemed to include mining licenses, for mining ore or minerals. Tenancies at will shall not be subject to the provisions of the last five sections. Mining licenses.
Tenancies at will.

SEC. 147. In all cases of redemption of lands sold on execution, or in all cases of the sale of lands on mortgage foreclosure, whether by advertisement or chancery sale, or in all cases of payment of judgments or decrees where the record shows a levy, or any other lien by mortgage levy, or lis pendens, it shall and may be lawful and it is hereby made the duty of the officer making such sale, or the person receiving such money, or his attorney, to discharge such levy, judgment, mortgage, or decree from the record of the register of deeds, in the proper county in which such sale is made. Discharge from levy, etc.

SEC. 148. The officer who shall make any sale on execution, shall, in his return on the execution, specify the articles sold, and the sum for which each article or parcel was sold; and if he shall be guilty of any fraud in the sale, or in the return, or shall unreasonably neglect to pay any money Return of articles, sold, etc.
Fraud, or neglect to pay money collected.

collected by him on such execution, when demanded by the creditor therein, he shall be liable to an action on the case, at the suit of the party injured, for five times the amount of the actual damages sustained by reason of such fraud or neglect.

Order restraining waste.

SEC. 149. If any person shall commit or threaten, or make preparations to commit any waste on any real estate which shall be attached or levied upon by execution in any civil action, the court from which such execution or attachment shall have issued, any circuit judge or circuit court commissioner, may, on the application of the plaintiff, either in term or vacation make an order restraining such person from committing any waste or further waste thereon. Any person who shall violate the terms of any such order, shall be deemed guilty of contempt of the court in which such action is pending, and shall be punishable as in other cases of contempt.

Penalty.

Enforcement of chancery decree.

SEC. 150. The court in chancery may enforce performance of any decree, or obedience thereto, by execution against the body of the party against whom such decree shall have been made, or by execution against the goods and chattels, and in default thereof, the lands and tenements of such party; but no execution shall be issued on any final decree, until the same shall have been enrolled, as hereinbefore provided.

CHAPTER XXIV.

The Enforcement of Judgments, Orders and Decrees Other Than by Execution.

Notice of sale of real estate.

SECTION 1. Hereafter any circuit court commissioner, or other officer authorized by law, or any person duly authorized by an order of the court to sell real estate in pursuance of any decree or final order of the court of equity, shall give a like notice of such sale as is required by law in the case of the sale of real estate on execution, and such sale shall be conducted in the same manner, and the person making such sale shall have the same powers and authority, and be subjected to the same liability as in case of sale of real estate on execution. All lawful fees for advertising and conducting such sale shall be added to the amount due on such order or decree and collected therewith.

Conduct of sale.

Fees.

Performance of decree, how enforced.

SEC. 2. In the case of a decree against an absent, concealed or non-resident defendant, process may issue to compel the performance of such decree, either by sequestration of the real and personal estate of the defendant, or such part thereof as shall be deemed sufficient; or where any specific estate or effects are demanded by the bill, by causing possession of the property so demanded to be delivered to the plaintiff.

When possession delivered.

SEC. 3. Possession in the case last mentioned shall not be delivered until the plaintiff shall have given such security,

and in such sum as the court shall direct, to abide the order of the court touching the restitution of the estate or effects delivered, in case the defendant shall appear and be admitted to defend the suit.

SEC. 4. Upon like security being given, the court, when a sequestration shall have issued, may order the decree to be satisfied out of the estate and effects sequestered; but if such security shall not be given, the estate and effects sequestered shall remain under the direction of the court, to abide its further order.

When decree satisfied out of sequestered estate.

SEC. 5. Whenever judgment shall have been recovered against any township, village or city, or against the trustees or common council, or officers thereof, in any action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but it shall be the duty of the justice of the peace rendering such judgment, if in a justice's court at any time after the time for appealing has elapsed, or the clerk of the court, if such judgment shall be rendered in a court of record and shall not be reversed, on the application of the party in whose favor such judgment was rendered, his attorney, executor, administrator, or assigns, to make and deliver to the party so applying a certified transcript of such judgment, showing the amount and date thereof, with the rate of interest thereon, and of the costs as taxed under the seal of the court, if in a court having a seal, and it shall be lawful for the party so obtaining such certified transcript to file the same with the supervisor of the township, if such judgment is against the township, or with the assessing officer or officers of the city or village, if such judgment is against a city or village. And it shall be the duty of the supervisor or supervisors or assessing officer or officers receiving any such certified transcript or transcripts of any judgment or judgments to proceed to assess the amount thereof with the costs and interest from the date of rendition of judgment to the time when the warrant for the collection thereof will expire upon the taxable property of the township, city or village, as the case may be, upon the then next tax roll of such township, city or village, without any other or further certificate or certificates than such certified transcript or transcripts, as a part of the township, city or village tax, adding the total amount of such judgment or judgments, as the case may be, to the other township, city or village taxes, and assessing the same in the same column with the general township, city or village tax. And it shall further be the duty of such supervisor, assessing officer or officers to set forth in the warrant attached to such tax roll each judgment separately, stating the amount thereof and to whom payable, and the same shall be collected and returned in the same manner as other taxes. And it shall further be the duty of such supervisor, assessing officer or officers, at the time when he or they shall deliver such tax roll to the treasurer or collecting

Judgment against municipality, how collected.

Transcript of judgment.

To be filed with assessing officer.

Amount to be assessed.

Each judgment to be set forth separately.

officer of any such township, city or village, to deliver to the township clerk or to the clerk or recording officer of any such city or village a statement in writing under his hand, setting forth in detail and separately such judgment or judgments as the case may be, stating the amount of each, with costs and interest as herein provided, and to whom payable. And it shall be the duty of such treasurer or collecting officer of any such township, city or village, to collect and pay said judgment to the owner thereof or his attorney, on or before the date when such tax roll and warrant shall be returnable. In case any supervisor, treasurer, or other assessing or collecting officer shall neglect or refuse to comply with any of the provisions of this and the succeeding section of this chapter, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars and costs of prosecution, or imprisonment in the county jail for a period not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. Nothing herein contained shall be construed to exclude other remedies given by law for the enforcement of such judgment.

Judgment against village having no assessing officer. SEC. 6. In any case where a judgment has been, or is hereafter recovered against any such village which, by reason of holding no municipal elections, or for any other reason has no available assessing officer within the jurisdiction of the court wherein such judgment was rendered, the owner of such judgment or any person knowing the facts, acting in behalf of such owner, may make an affidavit showing that the village against which any such judgment is pending and unsatisfied, has no available assessing officer within the said jurisdiction, and file the same with the clerk of the circuit court wherein said judgment is, or with the justice of the peace having custody of the docket wherein such judgment is written. Whereupon it shall be the duty of such officer as shall make said certified transcript, to attach thereto a copy of said affidavit, the correctness of which copy shall also be certified to in said certificate. Any party receiving such certified transcript of judgment and affidavit may file the same with the supervisor of the township or townships in which any such village, having no assessing officer, is located. Whereupon it shall be the duty of said supervisor to assess the amount of said judgment with costs and interest, upon the taxable property of said village, which is without an assessing officer, and thereafter the same steps and proceedings shall be had in the premises as though it were a judgment against the township or townships within which said village is located, save that it shall be assessed against the property within the corporate limits of said village only.

Affidavit.

Transcript and affidavit to be filed with supervisor.

Further proceedings.

Judgment against supervisors, etc. SEC. 7. When judgment shall be recovered against any county or the board of supervisors or any county officer in an action prosecuted by or against him in his name of office,

no execution shall be awarded or issued upon such judgment, but the same, unless reversed, shall be levied and collected as other county charges, and when so collected, shall be paid by the county treasurer to the person to whom the same shall have been adjudged, upon the delivery of a proper voucher therefor.

SEC. 8. No execution shall issue on any judgment against a school district, nor shall any suit be brought thereon, but the same shall be collected in the manner prescribed in this chapter. School district.

SEC. 9. Whenever any final judgment shall be obtained against the school district, if the same shall not be removed to any other court, the treasurer of the district shall certify to the supervisor of the township and to the director of the district the date and amount of such judgment, with the name of the person in whose favor the same was rendered, and if the judgment shall be removed to another court, the treasurer shall certify the same as aforesaid, immediately after the final determination thereof against the district. Treasurer to certify to judgment.

SEC. 10. If the treasurer shall fail to certify the judgment as required in the preceding section, it shall be lawful for the party obtaining the same, his executors, administrators, or assigns, to file with the supervisor the certificate of the justice or clerk of the court rendering the judgment, showing the facts which should have been certified by the treasurer. When treasurer fails to certify.

SEC. 11. If the district against which any such judgment shall be rendered is situated in part in two or more townships, a certificate thereof shall be delivered as aforesaid to the supervisor of each township in which such district is in part situated. Fractional school district.

SEC. 12. The supervisor or supervisors receiving either of the certificates of a judgment as aforesaid shall proceed to assess the amount thereof, with interest from the date of the judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of the district, placing the same on the next township assessment roll in the column for school taxes; and the same proceedings shall be had, and the same shall be collected and returned in the same manner as other district taxes. Supervisor to assess judgment.

SEC. 13. When any judgment or decree shall have been obtained against any corporate body, or unincorporated board, now or hereafter having charge or control of any State institution, no execution shall be issued thereon, but the amount thereof shall be included and collected in the State tax and paid to the person entitled thereto. Board of state institution.

CHAPTER XXV.

Of Arrest and Bail in Civil Actions.

Recognizance,
before whom
taken.

SECTION 1. In all cases where special bail shall be required to be put in, a recognizance thereof may be taken before any justice of the supreme court, any circuit judge, circuit court commissioner, clerk of any court of record, and shall be filed in the office of the clerk of the court in which the action is pending.

Form of
recognizance.

SEC. 2. The recognizance of special bail shall be, in substance, in the following form, to wit:

Court.

A. B. }
vs. }
C. D. }

.....county, ss. Be it remembered that on this.....day of.....in the year nineteen hundred and.....E. F. and G. H., of the county of..... personally appeared before J. K. (describing the office), and severally acknowledged themselves to owe A. B., the above named plaintiff, the sum of (the sum for which the bail is required), each, to be levied upon their several goods and chattels, lands and tenements, upon condition that if C. D., the defendant, shall be condemned in this action, at the suit of A. B., the plaintiff, he, the said C. D., shall pay the costs and condemnation of the court, or render himself into the custody of the sheriff of the county of.....(the county in which the defendant was arrested), for the same, or if he fail so to do, that the said E. F. and G. H. will pay the costs and condemnation for him.

Taken and acknowledged the day
and the year above written, before me, }
J. K. Clerk, etc. E. F.
G. H.

Bail-piece.

SEC. 3. Upon entering into any such recognizance, the persons becoming special bail shall be entitled to a bail-piece from the officer taking the recognizance, in substance, as follows, to wit:

.....Court.
.....county, ss. On thisday of.....
.....nineteen hundred andC. D. is delivered to bail on a cepi corpus, unto E. F. and G. H., of the county ofat the suit of A. B., in the plea of
(as the action may be).

J. K., Clerk (or Judge, etc.).

Exceptions to
special bail.

SEC. 4. Exceptions to special bail may be taken by an endorsement to that effect upon the recognizance on file, within twenty days after notice of putting in such bail, and bail shall be perfected within ten days after notice of such exception.

SEC. 5. Special bail may justify by affidavit, before any officer authorized to take recognizance of special bail; and such affidavit shall set forth the township, or city, and county, in this State, in which the bail reside, and that they are severally worth the sum in which the defendant is held to bail, after all their debts are paid.

Justification
of bail.

SEC. 6. If special bail be not put in and perfected within the time limited by law, according to the rules and practice of the court, and the plaintiff be satisfied with the bail taken by the officer serving the writ, he may take an assignment of the bail bond from the officer to whom the bond was given, and may sue thereon in his own name.

Assignment of
bail bond.

Suit thereon.

SEC. 7. The proceedings in the suit on the bail bond may be set aside if irregular, or stayed on terms, in order that a trial may be had in the original action.

Setting aside
or stay of
proceedings.

SEC. 8. Where the plaintiff has not lost a trial in the original action by reason of default in not filing and perfecting special bail, the court may stay the proceedings on the bail bond, upon the putting in and perfecting special bail, paying the costs of assigning the bail bond, and of the proceedings thereon, receiving a declaration in the action and pleading issuably to the merits, so that the original cause may be tried at the same time if the plaintiff shall so elect, and if the plaintiff has lost a trial by reason of such default, judgment shall be entered on the bail bond as security.

Terms of stay.

SEC. 9. If special bail shall not be put in and perfected within the time limited therefor, upon filing an affidavit that such bail is not put in and perfected, and that the writ has been returned served, a rule may be entered with the clerk of the court, in vacation or in term, requiring the sheriff or other officer making the arrest, to put in and perfect special bail within twenty days after service of notice of such rule.

Rule requiring
sheriff to put
in special bail.

SEC. 10. If such bail be not put in and perfected within the time specified in such rule, upon filing an affidavit of the service of notice thereof, a rule may be entered with such clerk, in vacation or in term, that an attachment issue against the sheriff, or other officer who may have made the arrest, and such attachment may be issued accordingly.

Attachment
in case of
failure.

SEC. 11. Upon the sheriff or other officer being brought into court on such attachment, for not putting in bail to the action, the court may by summary proceedings ascertain the amount due to the plaintiff in the action, in the same manner as if interlocutory judgment had been entered against the defendant, and may render a judgment against such sheriff or other officer for the amount so ascertained to be due, with the costs of the suit and proceedings.

Proceedings
against
sheriff, etc.

SEC. 12. If the court shall determine that the amount so ascertained ought to be paid by such sheriff or other officer, and such sheriff or other officer shall confess a judgment to the plaintiff, for the amount so ascertained, with the costs of suit and the proceedings, the court shall thereupon stay all

Stay of
proceedings.

other proceedings against him, until he shall have had a reasonable time to obtain judgment on the bond taken on the arrest of the defendant, and to collect the amount so ascertained to be due to the plaintiff.

Execution on judgment against sheriff, etc.

SEC. 13. If, in any such action, after a reasonable time, the sheriff or other officer shall not satisfy the plaintiff in the action the amount due him, with costs and interest, the court shall award execution on the judgment against such sheriff or other officer; and if such execution be returned unsatisfied, in part or in whole, the same proceedings shall be had on the official bond of such sheriff or other officer to collect such deficiency, as in other cases of delinquency.

Officer may put in special bail, etc.

SEC. 14. The sheriff or other officer who shall have made an arrest may, for his own indemnity, put in and perfect special bail to the action when such bail shall have been required as herein directed, at any time before judgment rendered against him, on payment of the cost of the proceedings against him; and the putting in of such bail by such officer shall not be deemed a performance of the condition of the bond taken on the arrest; but such officer may, notwithstanding, prosecute such bond and recover the amount of all damages he may have sustained by the neglect of the defendant to put in such bail.

When suit may be commenced against special bail.

SEC. 15. No suit shall be commenced upon any recognizance of special bail, until an execution against the body of the defendant, having at least fifteen days between the teste and return thereof, shall have been issued to the sheriff of the county in which such defendant was arrested, and by him returned that the defendant could not be found within his county.

Sheriff to endeavor to serve execution.

SEC. 16. Upon any such execution being issued and delivered to the sheriff, it shall be his duty to use all reasonable endeavors to execute the same, notwithstanding any directions he may receive from the plaintiff, or his attorney.

When bail entitled to verdict.

SEC. 17. If it appear on the trial of any such action against bail, that an execution against the body of the defendant was not issued as herein directed, or that it was not issued in sufficient time to enable the sheriff to execute the same, or that directions were given by the plaintiff or his attorney to prevent the service of such execution, or that any other fraudulent or collusive means were used to prevent such service, the bail shall be entitled to a verdict in their favor.

Death of principal; relief of bail.

SEC. 18. When the defendant in a suit shall die after the return of the execution against his body, and before the expiration of eight days from the return of the process served on his bail, the court shall relieve such bail on the same terms as if they had surrendered their principal at the time of his death.

Surrender by special bail.

SEC. 19. The special bail of any defendant may surrender him or the sheriff of the county may retake such defendant into his custody for the reasons set forth in the next section, or such defendant may surrender himself in exoneration of

his bail, before any judge of a circuit court, or a circuit court commissioner.

SEC. 20. The proceedings to effect such surrender shall be as follows: Proceedings
for surrender.

1. There shall be produced to the officer authorized to accept the same two copies of the bail-piece, upon one of which such officer shall endorse an order that the defendant be committed to the custody of the sheriff, in exoneration of his bail, which shall be delivered to such sheriff, and shall authorize him to commit and detain such defendant, until he shall be duly discharged;

2. Upon producing to such officer the certificate of the sheriff, that the defendant has been committed to, and remains in his custody, by virtue of such order of commitment, acknowledged before such officer by the sheriff, or proved by a subscribing witness thereto, an order shall be made by such officer, requiring the plaintiff to show cause before him, at such time and place as he shall appoint, why the bail of such defendant should not be exonerated from their liability;

3. Upon producing proof of the due service of such order on the plaintiff or his attorney, such officer shall proceed to hear the allegations and proofs of the parties; and if no good cause to the contrary appear, shall indorse an order on the second copy of the bail-piece, briefly reciting the proceedings had before him, and thereby declaring that the bail of such defendant are discharged from all liability as such bail, in the suit in which such bail-piece was taken;

4. To such copy of the bail-piece shall be attached the certificate of the sheriff hereinbefore required, with the acknowledgment or proof thereof, the order to show cause and the proof of the service thereof; which paper shall be immediately filed in the office of the clerk of the court, and until so filed, the liability of the bail shall continue;

5. If the sheriff who shall have taken such special bail bond shall discover that any surety to said bond is insufficient, he shall re-take into custody the defendant who executed said bond, in any place that he may be found, and may commit the said defendant to the county jail until other good and sufficient surety shall be offered.

SEC. 21. When a bail bond shall have been taken on the arrest of a defendant, the bail therein may surrender their principal or the sheriff of the county may re-take said defendant into his custody, or he may surrender himself in exoneration of his bail in the same manner, before the same officers and with the like effect as provided in the preceding section with respect to special bail. Surrender of
defendant.

Liberties of Jails and Escapes.

SEC. 22. Every person who shall be in the custody of the sheriff of any county by virtue: Who entitled
to liberties
of jail.

1. Of any *capias ad respondendum*; or
2. Of any execution in a civil action; or

Limits of jail.	<p>3. Of any attachment for the non-payment of costs; or</p> <p>4. In consequence of a surrender in exoneration of his bail; shall be entitled to the liberty of the jail limits, which limits shall be co-extensive with the limits of such county, upon executing a bond to such sheriff and his assigns, as prescribed in the next section.</p>
Bond to be executed by prisoner.	<p>SEC. 23. Such bond shall be executed by the prisoner and one or more sufficient sureties, being inhabitants and householders of the county, in a penalty, which shall be as follows:</p> <p>1. It shall be not less than double the amount of the sum in which the sheriff was required to hold the defendant to bail, if he be in custody on original process, or be surrendered in exoneration of his bail before judgment docketed against him;</p> <p>2. It shall be not less than double the amount directed to be levied by the attachment or execution, if he be in custody upon attachment or execution;</p> <p>3. It shall be not less than double the amount for which judgment shall have been rendered against him, if he be surrendered after judgment docketed.</p>
Conditions of bond.	<p>SEC. 24. Such bond shall be conditioned, that the person so in custody of such sheriff, shall not at any time or in any manner, escape or go without the jail limits of the county, until legally discharged.</p>
For whom held.	<p>SEC. 25. Every such bond taken for the liberties of any jail, shall be valid, and shall be held for the indemnity of the sheriff taking the same, and of the party at whose suit the prisoner executing such bond shall be confined.</p>
When prisoner may be recommitted.	<p>SEC. 26. If a sheriff who shall have taken any such bond for the liberties of any jail, shall discover that any surety to such bond is insufficient, he may commit the prisoner who executed the same to close confinement in such jail, until other good and sufficient sureties shall be offered.</p>
Surrender by sureties.	<p>SEC. 27. The sureties in any bond given for the liberties of any jail, may surrender their principal at any time before judgment shall be rendered against them on such bond; but such bail shall not be exonerated thereby from any liability incurred before the making of such surrender.</p>
How surrender made.	<p>SEC. 28. Such surrender may be made as follows: The bail may take their principal to the keeper of the jail, and upon the written requirement of such bail, the keeper shall take such principal into his custody, and thereupon indorse upon the bond given for the limits, an acknowledgment of the surrender of such principal; and such keeper shall also, if required, give the bail a certificate acknowledging such surrender.</p>
What deemed escape of prisoner.	<p>SEC. 29. The going at large of any prisoner who shall have executed such bond, or of any prisoner who would be entitled to the liberties of any jail upon executing such bond, within the jail limits of the county in which he shall be in custody, shall not be deemed an escape of such prisoner; but in case any such prisoner shall go at large without the jail</p>

limits of such county without the assent of the party at whose suit such prisoner shall be in custody, the same shall be deemed an escape and forfeiture of the bond so executed, and the sheriff in whose custody such prisoner shall have been, shall have the same authority to pursue and re-take such prisoner, as if such escape had been made from the jail.

SEC. 30. In every suit brought by a sheriff on such bond, the defendants may give notice of a voluntary return of the prisoner to the liberties of the jail from which he escaped, or a recaption of such prisoner by the sheriff from whose custody he escaped, before the commencement of such suit, and may give evidence thereof in bar of such action; and such defendants shall be entitled to make such or any other defense to such suit, which might be made by such sheriff, to an action against him for an escape. Defense in suit on bond.

SEC. 31. But if an action shall have been brought against such sheriff for such escape, and due notice thereof shall have been given to the prisoner and his sureties who executed the bond for the jail liberties, the judgment against such sheriff shall be conclusive evidence of his right to recover against such prisoner and his sureties, to whom such notice was given, in the action on such bond, as to all matters which were or might have been controverted in the action against the sheriff. Effect of judgment against sheriff.

SEC. 32. In every such action brought by a sheriff on a bond executed for the jail liberties, if it shall appear that judgment has been rendered against such sheriff for the escape of the prisoner, and that due notice of the pendency of the action against the sheriff was given to such prisoner and his sureties, to enable them to defend the same, the court shall render judgment in the suit upon such bond, at the first term after the commencement of such suit. Summary judgment for sheriff.

SEC. 33. But to entitle any sheriff to move for such judgment he shall have filed his declaration, and shall show to the court that he has given twenty days' notice of such motion. Previous notice, etc., required.

SEC. 34. If it shall appear on the hearing of such motion, that the defendants have any meritorious cause of defense, which was not controverted in the action against the sheriff, and which by law could not have been so controverted, the court shall suspend proceedings on such judgment, until a trial in such action shall be had; but such judgment shall remain as a security for the sheriff. Stay of proceedings on judgment.

SEC. 35. If such defense be established, the court shall vacate such judgment, and render judgment as in other cases. When judgment vacated.

SEC. 36. In every action brought by a sheriff on such bond, the recovery of a judgment against him for the escape of the prisoner, shall be evidence of the damages sustained by him, in the same manner as if such judgment had been collected; and such sheriff shall be entitled to recover the costs, and his reasonable expenses in defending the suit against him, as part of his damages. Evidence of damages, etc.

Assignment of forfeited bond.	<p>SEC. 37. If any such bond shall be forfeited, the party at whose suit the prisoner executing the same shall have been confined, or in case of his death, the executors or administrators of such party, shall be entitled to an assignment thereof, which shall be made by the sheriff taking the same, or his successor in office, or in case of a vacancy in his office, by his under-sheriff, by an indorsement thereon.</p>
Action by assignees.	<p>SEC. 38. The party to whom such assignment shall have been made, may maintain an action on such bond as assignee of the sheriff taking the same, in the same cases in which such action might be maintained by such sheriff, and upon obtaining judgment therein, he shall recover damages for such breaches of the condition as shall have been assigned by him, as follows:</p> <ol style="list-style-type: none">1. If the prisoner escaping was confined by virtue of an execution, or by virtue of an attachment for nonpayment of costs, the measure of the plaintiff's damages shall be the amount directed to be levied by such execution or attachment, with interest thereon to the time of such recovery.2. If such prisoner was confined by virtue of a <i>capias</i> ad respondendum, or upon a surrender in exoneration of his bail, made before or after judgment rendered against him, the plaintiff shall recover only the actual damages sustained by him.
Damages.	
Effect of assignment.	<p>SEC. 39. The acceptance of an assignment of any such bond, shall be a bar to any action by or on behalf of the party receiving such assignment, against the sheriff or other officer making the same, for any escape by the prisoner executing such bond, amounting to a breach of such bond.</p>
Defense to action of assignees.	<p>SEC. 40. In every action brought by the assignee of such bond, the defendant shall be entitled to give notice of a voluntary return of the prisoner to the liberties of the jail, before the commencement of such action, in bar thereof, and to make any defense which they would be entitled to make, if such action had been brought in the name and for the benefit of the sheriff to whom such bond was executed.</p>
Stay of proceedings against sheriff.	<p>SEC. 41. In case the party at whose suit any person shall have been confined to the liberties of a jail, shall refuse or neglect to take an assignment of the bond executed by such person, as hereinbefore provided, and shall prosecute any sheriff for the escape of such person, the court in which such action shall be pending, shall by rule, stay all proceedings upon the judgment against such sheriff, until he shall have had a reasonable time to prosecute the bond taken by him, and to collect the amount of any judgment he may recover thereon.</p>
When stay not authorized.	<p>SEC. 42. But the last preceding section shall not extend to authorize such stay of proceedings in any action where the judgment shall have been recovered against any sheriff, for any escape committed with the assent, aid or assistance of such sheriff.</p>

Of Escapes and Liability of Sheriffs Therefor.

SEC. 43. All prisoners committed to any jail upon process for contempt, or committed for misconduct in the cases prescribed by law, except on attachments for the non-payment of costs, shall be actually confined and detained within such jail until they shall be from thence discharged by due course of law, or shall be removed to some other jail or place of confinement in the cases provided by law; and if any sheriff or keeper of a jail shall permit or suffer any prisoner so committed to such jail, to go or be at large out of his prison, except by virtue of some writ of habeas corpus or rule of court, or in such other cases as may be provided by law, he shall be liable to the party aggrieved, for his damages sustained thereby and shall be deemed guilty of a misdemeanor.

When prisoners to be actually confined.

SEC. 44. If any prisoner committed to any jail, by virtue of any *capias ad respondendum*, or upon a surrender in exoneration of his bail, made either before or after judgment rendered, shall go or be at large, without the jail limits of the county in which he shall have been imprisoned, without the assent of the party at whose suit such prisoner shall have been committed, the same shall be deemed an escape of such prisoner, and the sheriff having charge of such jail shall be answerable therefor to such party in an action of trespass on the case to the extent of the damages sustained by him.

What deemed an escape.

SEC. 45. If any prisoner committed to any jail, in execution in a civil action, or upon an attachment for the non-payment of costs, shall go or be at large without the jail limits of the county in which he shall have been imprisoned, without the assent of the party at whose suit such prisoners shall have been committed, the same shall be deemed an escape of such prisoner, and the sheriff having charge of such jail shall be answerable therefor to such party for the debt, damages, or sum of money for which such prisoner was committed, to be recovered in an action of *assumpsit* or of trespass on the case.

Idem.

SEC. 46. In every action against a sheriff or other officer, for the escape of any prisoner, the defendant may give notice that before the commencement of such action, such prisoner voluntarily returned to the jail from which he escaped, or within the liberties thereof; or that such defendant re-took such prisoner, and had him within the jail from which he escaped or within the liberties thereof, before the commencement of such action; and in either case that such escape was made without the consent of such defendant.

Defense by sheriff.

SEC. 47. Every sheriff or other officer, who shall demand or receive any reward, gratuity, or valuable thing, to procure, assist, connive at, or permit any escape of any prisoner in his custody, shall be deemed guilty of a misdemeanor.

Penalty for receiving gratuity, etc.

SEC. 48. Every sheriff or other officer who shall be convicted of a violation of the last section, shall forfeit his office, and shall be forever thereafter incapable of executing the same.

Forfeiture of office.

Payment for
board and
keeping.

SEC. 49. Whenever in any civil action, any person shall be committed to any jail in default of bail, or by virtue of an execution issued or proceeding founded on a judgment rendered in such suit, the plaintiff or defendant at whose instance such person shall be so imprisoned, shall pay, on demand, to the sheriff or the keeper of the common jail of the county, the expenses of the board and keeping of such person so imprisoned; and the said sheriff or keeper of said jail shall not be required to retain such person any longer in jail than such expenses of said board and keeping shall be paid in advance; nor shall such expenses constitute any charge against the county.

CHAPTER XXVI.

Of Proceedings by Attachment in Courts of Record.

When
creditor may
proceed by
attachment.

SECTION 1. Any creditor shall be entitled to proceed by attachment against his debtor in the circuit court of the county in which the creditor or the debtor (or in case of joint debtors, either of them) shall reside, if the debtor have property subject to attachment in said county; and in case the debtor has no property in said county, or is a non-resident of this State, then in the circuit court of any county where the property of the debtor subject to attachment, may be found, in the cases, upon the conditions, and in the manner provided in this chapter.

Affidavit to
be attached
to writ.

SEC. 2. Before any such writ of attachment shall be executed, the plaintiff, or some person in his behalf, shall make and annex thereto an affidavit, stating that the defendant therein is indebted to the plaintiff, and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract, or upon judgment or decree, and containing a further statement that the deponent knows, or has good reason to believe, either;

Contents of
affidavit.

1. That the defendant has absconded, or is about to abscond from this State, or that he is concealed therein, to the injury of his creditors; or

2. That the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal any of his property with the intent to defraud his creditors; or

3. That the defendant has removed, or is about to remove any of his property out of this State, with intent to defraud his creditors; or

4. That he has fraudulently contracted the debt, or incurred the obligation respecting which the suit is brought; or

5. That the defendant is not a resident of this State, and has not resided therein for three months immediately preceding the time of making such affidavit; or

6. That the defendant is a foreign corporation:
Provided, That such affidavit shall not be deemed insufficient by reason of the intervention of a day between the date of

Proviso,
sufficiency of
affidavit.

the jurat to such affidavit, and the issuing of the writ, and that when the person making such affidavit shall reside in any other county in this State, than that in which the writ of attachment is to issue, one day's time for every thirty miles travel, by the usual post route, from the residence of such person to the place from which such writ shall issue, shall be allowed between the date of such jurat and the issuing of such writ, and Sundays and legal holidays shall not be counted as intervening days in any case.

SEC. 3. In any county where the plaintiff may reside, other than the one wherein the principal office of any domestic corporation may be located, a writ of attachment may be the first process against any corporation, which shall be served in the same manner as other writs of attachment issuing out of the court wherein suit is commenced; and upon the return of such service being made, such corporation shall be deemed to be in court, and the like proceedings as near as may be, shall be thereupon had as in cases of suits against individuals: *Provided*, That this section shall not apply to railroad companies or corporations whose right of way, or any part of same, is within the boundaries of the State of Michigan, nor to navigation companies or corporations.

Against corporations.

Proviso, railroad and navigation corporations.

SEC. 4. Such writ of attachment shall be indorsed in the same cases, and in the same manner, as original writs are required by law to be indorsed, by some person as security for costs, and with the like effect.

Indorsement.

SEC. 5. No writ of attachment shall be issued under the provisions of this chapter, unless the amount stated in such affidavit as due to the plaintiff, over and above all legal set-offs, shall exceed the sum of one hundred dollars.

When not to issue.

SEC. 6. Such writ shall command the sheriff, or other officer to whom it may be directed, to attach so much of the lands, tenements, goods, chattels, moneys, and effects of the defendant not exempt from execution, wheresoever the same may be found within the county, as will be sufficient to satisfy the plaintiff's demand, and safely keep the same to satisfy any judgment that may be recovered by the plaintiff in such attachment, and also to summon the defendant, if to be found within his county, or in any county where he may have seized property under and by virtue of such writ, to appear before the circuit court, at the time and place to be specified in such writ, to answer the plaintiff; and such writ shall be tested and made returnable in the same manner as other writs issuing out of the circuit court.

Command of writ.

How tested and returnable.

SEC. 7. The provisions of chapter twenty-three of this act, relating to exemptions from execution, and the manner of levying upon property belonging to a class or species in which exemptions are by law allowed, shall be applicable to the levy of attachments in like cases.

Exemptions.

SEC. 8. The sheriff or other officer to whom such writ shall be directed, shall execute the same on or before the return day thereof, by seizing so much of the lands, tenements, goods,

How writ executed.

Payment for
board and
keeping.

SEC. 49. Whenever in any civil action, any person shall be committed to any jail in default of bail, or by virtue of an execution issued or proceeding founded on a judgment rendered in such suit, the plaintiff or defendant at whose instance such person shall be so imprisoned, shall pay, on demand, to the sheriff or the keeper of the common jail of the county, the expenses of the board and keeping of such person so imprisoned; and the said sheriff or keeper of said jail shall not be required to retain such person any longer in jail than such expenses of said board and keeping shall be paid in advance; nor shall such expenses constitute any charge against the county.

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Affidavit to
be attached
to writ.

SEC. 2. Before any such writ of attachment shall be executed, the plaintiff, or some person in his behalf, shall make and annex thereto an affidavit, stating that the defendant therein is indebted to the plaintiff, and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract, or upon judgment or decree, and containing a further statement that the deponent knows, or has good reason to believe, either;

Contents of
affidavit.

1. That the defendant has absconded, or is about to abscond from this State, or that he is concealed therein, to the injury of his creditors; or

2. That the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal any of his property with the intent to defraud his creditors; or

3. That the defendant has removed, or is about to remove any of his property out of this State, with intent to defraud his creditors; or

4. That he has fraudulently contracted the debt, or incurred the obligation respecting which the suit is brought; or

5. That the defendant is not a resident of this State, and has not resided therein for three months immediately preceding the time of making such affidavit; or

6. That the defendant is a foreign corporation:

Proviso,
sufficiency of
affidavit.

Provided. That such affidavit shall not be deemed insufficient by reason of the intervention of a day between the date of

the jurat to such affidavit, and the issuing of the writ, and that when the person making such affidavit shall reside in any other county in this State, than that in which the writ of attachment is to issue, one day's time for every thirty miles travel, by the usual post route, from the residence of such person to the place from which such writ shall issue, shall be allowed between the date of such jurat and the issuing of such writ, and Sundays and legal holidays shall not be counted as intervening days in any case.

SEC. 3. In any county where the plaintiff may reside, other than the one wherein the principal office of any domestic corporation may be located, a writ of attachment may be the first process against any corporation, which shall be served in the same manner as other writs of attachment issuing out of the court wherein suit is commenced; and upon the return of such service being made, such corporation shall be deemed to be in court, and the like proceedings as near as may be, shall be thereupon had as in cases of suits against individuals: *Provided*, That this section shall not apply to railroad companies or corporations whose right of way, or any part of same, is within the boundaries of the State of Michigan, nor to navigation companies or corporations.

Against corporations.

Proviso, railroad and navigation corporations.

SEC. 4. Such writ of attachment shall be indorsed in the same cases, and in the same manner, as original writs are required by law to be indorsed, by some person as security for costs, and with the like effect.

Indorsement.

SEC. 5. No writ of attachment shall be issued under the provisions of this chapter, unless the amount stated in such affidavit as due to the plaintiff, over and above all legal set-offs, shall exceed the sum of one hundred dollars.

When not to issue.

SEC. 6. Such writ shall command the sheriff, or other officer to whom it may be directed, to attach so much of the lands, tenements, goods, chattels, moneys, and effects of the defendant not exempt from execution, wheresoever the same may be found within the county, as will be sufficient to satisfy the plaintiff's demand, and safely keep the same to satisfy any judgment that may be recovered by the plaintiff in such attachment, and also to summon the defendant, if to be found within his county, or in any county where he may have seized property under and by virtue of such writ, to appear before the circuit court, at the time and place to be specified in such writ, to answer the plaintiff; and such writ shall be tested and made returnable in the same manner as other writs issuing out of the circuit court.

Command of writ.

How tested and returnable. Exemptions.

SEC. 7. The provisions of chapter twenty-three of this act, relating to exemptions from execution, and the manner of levying upon property belonging to a class or species in which exemptions are by law allowed, shall be applicable to the levy of attachments in like cases.

SEC. 8. The sheriff or other officer to whom such writ shall be directed, shall execute the same on or before the return day thereof, by seizing so much of the lands, tenements, goods,

How writ executed.

Inventory.	chattels, moneys and effects of the defendant, wheresoever the same may be found in his county, as will be sufficient to satisfy the demand and costs, and by making an inventory thereof, and serving a copy of such attachment and inventory, certified by him, upon the defendant, if he can be found in his county; and in case any property of the defendant is found and seized in said county, but not sufficient to satisfy the demand and costs, then said officer shall seize other property of the defendant, subject to attachment, sufficient with that seized within his county to satisfy the demand and costs, wherever the same may be found within the State, and shall serve a copy of such attachment and inventory upon said defendant, if found within either county where property has been seized under this writ, and in case any defendant shall not be found in either county where property has been seized, such service may be made in any county within this State by the sheriff of the county wherein such defendant may be: <i>Provided, however,</i> That in case of several attachments of the same property, it shall be necessary to make an inventory and serve a copy thereof only with the first.
Insufficiency of property seized.	
Service of copies.	
Proviso, several attachments.	
Appraisal of property.	SEC. 9. The property so attached shall be appraised by two disinterested freeholders of the county in which said property was seized, who shall first be sworn by the officer to make a true appraisement thereof, which appraisement shall be signed by such freeholders and returned with the writ: <i>Provided,</i> That in case of several attachments of the same property, one inventory and appraisal shall be sufficient, and the subsequent attachment shall be served on the property as in the hands of the officer, by reference to the inventory and appraisal under the first writ.
Proviso, several attachments.	
Attachment of real estate.	SEC. 10. In attaching real estate, or any right or interest in land, it shall not be necessary that the officer should enter upon the land or be within view of it; and in attaching shares of stock, or the interest of a stockholder in any corporation organized under the laws of this State, the levy shall be made in the manner provided by law for the seizure of such property on execution.
Shares of stock, etc.	
Goods, etc., how bound.	SEC. 11. Such attachment shall bind the goods and chattels so attached from the time they were attached.
Lien on real estate.	SEC. 12. Real estate attached shall be bound, and the attachment shall be a lien thereon from the time when a certified copy of the attachment, with a description of the real estate attached, shall be deposited in the office of the register of deeds in the county where the real estate attached is situated.
Register of deeds to note time and enter receipt, etc.	SEC. 13. Each register of deeds shall note on every such certified copy, the day, hour and minute when he received it, and shall also enter in a book to be kept by him for that purpose, the names of the parties in such writ, designating who is plaintiff and who defendant, the time when the land was attached, a correct description of the land attached, and the time when such copy was deposited.

SEC. 14. The register of deeds shall be entitled to a fee of twenty-five cents for his services in each case, to be paid on the delivery of such copy; and the appraisers of the property attached pursuant to the provisions of this chapter, shall each be entitled to receive two dollars for each day, and one dollar for each half day necessarily occupied by him in the appraisal, and six cents per mile for traveling one way, to be paid on the rendition of the services; which fees and compensation may be taxed for the plaintiff in his bill of costs.

Fees of
register
and appraisers.

SEC. 15. The property attached shall remain in the hands of the officer serving the attachment, unless the defendant or any other person in whose possession such property may have been found, shall, before judgment in such suit, deliver to the officer a bond, executed to him by two or more sufficient sureties, being freeholders within this State, either with or without such defendant, or other person, to the satisfaction of such officer, as hereinafter provided.

Property to
remain with
officer.

Bond for
possession.

SEC. 16. Such bond may be in a penalty double the amount specified in the affidavit annexed to the writ, as due to the plaintiff, conditioned for the payment of any judgment which may be recovered by the plaintiff in the suit commenced by such attachment, within sixty days after such judgment shall be rendered; or in a penalty double the appraised value of the property, and conditioned that such property shall be produced in like condition as when received, to satisfy any execution that may be issued on any judgment to be recovered by the plaintiff upon such attachment.

Conditions
of bond.

SEC. 17. Upon the execution and delivery of such bond as provided in the preceding sections, the property attached shall be delivered by the officer to the defendant or person in whose possession the same shall have been found, but the suit shall not be discontinued or in any way affected by such delivery.

Release of
property.

SEC. 18. In case of a failure to perform the condition of any such bond the plaintiff in such attachment may prosecute a suit thereon in his own name; and shall be entitled to recover thereon the full value of the property attached, or so much thereof as shall be sufficient to satisfy the judgment rendered on such attachment, with interest and costs.

Prosecution
of bond.

SEC. 19. Upon the return of such writ, if it appear that a copy thereof has been personally served on the defendants, or either of them, or if either of the defendants shall appear in the suit, the same proceedings may be thereupon had in such suit, in all respects as upon the return of an original writ of summons personally served, in a suit commenced by such summons.

Return of
writ per-
sonally served.

SEC. 20. If it appear by the return of such writ that any property has been attached thereon, and that neither of the defendants could be found, the plaintiff shall, within thirty days after such return, unless the defendants or some of them shall sooner appear in the suit, cause a notice to be published in some newspaper printed in the county for which said circuit court is held, and if no newspaper is printed in said

When
notice to be
published.

county, then in some newspaper printed in the judicial circuit in which such writ shall be returned, which notice shall state the names of the parties, the time when, from what court, and for what sum the writ was issued, and when the same was returnable, and shall be published for six successive weeks, and if any plaintiff shall neglect to cause such notice to be so published, as required in this section, the attachment shall be dismissed with costs: *Provided*, That such notice may be personally served on any defendant wherever found, and in case of such service no publication thereof shall be required.

Proviso,
personal
service.

Bond to be
returned and
filed by
officer.

SEC. 21. If any bond shall have been given to the sheriff or other officer serving the writ, as hereinbefore provided, he shall state the fact in his return to the attachment, and return and file such bond therewith; and if any such bond shall be given after the return of the writ, and before judgment, such sheriff or other officer shall immediately cause the same to be filed in the clerk's office to which such writ was returned, and give notice thereof to the plaintiff or his attorney.

Issue of
attachment
in actions
of tort.

SEC. 22. In all actions based upon tort, if in addition to the affidavit hereinbefore required, the plaintiff shall also in such affidavit set forth in detail his cause of action, the circuit judge of the circuit in which such action is commenced, may make an order authorizing the issuance of an attachment in said cause, specifying in such order the amount or value of the property which may be attached by virtue thereof; and it shall be required in such order that the plaintiff file a sufficient bond, with a penalty fixed in said order, and with sureties to be approved by the clerk of the court, conditioned that said plaintiff prosecute said suit with diligence, and will pay any damages and costs that may be awarded to the defendant in said attachment, either in said suit, or in any action brought by said defendant for damages accruing by reason of such attachment. Except as herein otherwise provided, the proceedings under such attachment shall be the same as in other attachment cases.

Bond to be
filed by
plaintiff.

Filing
declaration.

SEC. 23. The plaintiff shall file his declaration in said attachment in the same manner and within the same time and serve the same as is provided by the rules and practice governing proceedings in circuit court in other cases in assumpsit. If a copy of the attachment shall not have been served upon any of the defendants and none of them shall appear in the suit, the plaintiff, on filing an affidavit of publication of the notice hereinbefore required for six successive weeks, or on filing due proof of personal service of such notice on any defendant not less than fifteen days prior to the filing of such proof, may proceed in such suit as if a copy of such attachment had been personally served upon the defendants.

When may
proceed as if
personal ser-
vice had.

Defendant
not served,
appearance of.

SEC. 24. If any defendant not served with a copy of the attachment, shall appear at any time before judgment, he

may be admitted by the court to defend the suit, upon such terms as such court may deem reasonable.

SEC. 25. When a copy of the attachment shall have been personally served on the defendant, or such defendant shall have appeared in the suit, judgment shall be rendered, and execution shall issue thereon, in the same manner and with the like effect as in a suit commenced by summons, in which the summons shall have been returned personally served, except that by virtue of such execution, the officer to whom the same shall be directed and delivered may sell any property attached in the suit, and remaining in the hands of the officer who served the attachment, wherever the same may be in this State.

When defendant personally served, proceedings same as in suit commenced by summons.

SEC. 26. When a copy of the attachment shall not have been served, and the defendant shall not have appeared in the suit, judgment shall be rendered, and execution may issue in the same form as if such copy had been personally served, but such judgment shall not be conclusive against the defendant, and such execution shall only authorize the officer to whom it is directed to sell the property attached in such suit.

In case of no service and appearance.

SEC. 27. In the case specified in the last section, the attorney issuing the execution shall indorse thereon or annex thereto a description of the property so attached, with a direction to the officer to sell the same, or so much thereof as may be sufficient to satisfy the execution, and not to levy the same or any part thereof upon any other property.

Indorsement on execution.

SEC. 28. If a bond shall have been given to the officer, conditioned for the payment of the judgment, as provided in the fifteenth and sixteenth sections of this chapter, and judgment be rendered in favor of the plaintiff, it shall not be necessary to issue any execution upon such judgment, to entitle such plaintiff to sue on such bond.

When issue of execution not necessary to suit on bond.

SEC. 29. When any of the property taken in an attachment shall consist of animals or perishable property, the court, or any judge thereof, may make an order, directing such property to be sold, and the money arising from such sale to be brought into court, to abide the order of such court.

Order for sale of perishable property.

SEC. 30. Upon such order for a sale being made, the officer having such property shall advertise and sell the same, in the same manner that personal property of like character is required to be advertised and sold on execution, and shall deposit the proceeds thereof with the clerk to whose office the attachment is required to be returned.

Sale and disposition of proceeds.

SEC. 31. If the plaintiff recover judgment, the court may order such money to be paid to the plaintiff thereon; but if judgment be rendered against the plaintiff, or the suit be discontinued, or the attachment dismissed, the court shall order such money to be paid to the defendant, or person entitled thereto.

To whom proceeds paid.

Practice.

SEC. 32. The practice in actions commenced by attachment shall be the same in all respects as in personal actions commenced by summons, as near as may be, except as otherwise provided by law.

Attachment against property of joint obligors.

SEC. 33. When two or more persons are jointly indebted as joint obligors, partners, or otherwise, and an affidavit shall be made, as provided in section two of this chapter, so as to bring one or more of such joint debtors within its provisions, and amenable to the process of attachment, then the writ of attachment shall issue against the property and effects of such as are so brought within the provisions of said section; and the officer shall be also directed in said writ to summon all such joint debtors as may be named in the affidavit attached thereto, to answer to the said actions as in other cases of attachment.

Sale in case of incumbrance removed before sale.

SEC. 34. If any estate which shall be attached shall be subject to a mortgage, or other incumbrance, and the mortgage shall be redeemed, or the incumbrance removed before the sale on the execution, such estate may be sold on such execution in the same manner and with the same effect as if the mortgage or other incumbrance had never existed.

Attachment when debt not due.

SEC. 35. Whenever the plaintiff shall be entitled to a writ of attachment by virtue of sections one and two of this chapter, except that the debt owing to him by the debtor is not due, he may begin and prosecute his suit by attachment by complying with the provisions of this chapter: *Provided, however,* That before any such writ of attachment shall issue, the plaintiff, or some person in his behalf, shall make an affidavit in compliance with section two of this chapter, except that instead of stating that such indebtedness is due, such affidavit shall state when the same will become due, and show reasons for the immediate issuance of said writ to the satisfaction of a circuit judge, and obtain his order indorsed on such affidavit that such writ may issue and be proceeded with; and no other or further affidavit shall be required, and said lien so created shall continue until the final decision in said cause, unless otherwise discharged: *Provided further,* No judgment shall be taken upon such indebtedness until the same shall have matured by the terms thereof.

Further proviso, affidavit.**Further proviso, judgment.****Attachment after suit commenced.**

SEC. 36. In any action, which has been or may hereafter be commenced by summons or declaration, in any court of record in this State, the plaintiff may, at any time before judgment shall be rendered therein, proceed by attachment, in the same action, against the property of the defendant in the manner hereinafter provided.

Affidavit.

SEC. 37. At any time after said summons or declaration shall have been personally served on the defendant or defendants, or either of them, the plaintiff, or some person in his behalf, may make and file with the clerk of the court in which such action shall have been commenced, an affidavit, which affidavit shall conform to and be governed by the pro-

visions of section two of this chapter, and of section twenty-two in an action of tort.

SEC. 38. Upon filing such affidavit, said clerk shall issue a writ of attachment, which writ shall recite the commencement of said action, and shall command the sheriff to attach so much of the lands, tenements, goods, chattels, moneys and effects of the defendant, not exempt from execution, wherever the same may be found in the county, as shall be sufficient to satisfy the plaintiff's demand and safely keep the same to satisfy any judgment that may be recovered by the plaintiff in such action; and in case any property of the defendant is found and seized in said county, but not sufficient to satisfy the demand and costs, to attach other property of the defendant subject to attachment, sufficient with that seized within his county, to satisfy the demand and costs, wherever the same may be found within this State; and such writ of attachment may be made returnable in not less than fourteen nor more than thirty days from the issue thereof: *Provided*, That if the action be one of tort the provisions of section twenty-two of this chapter shall be complied with.

Issue of writ.

Providso,
action of tort.

SEC. 39. The subsequent proceedings by virtue of such attachment, so far as the same are not herein provided for, shall be the same as in suits commenced by attachment, so far as the same are applicable, except that no additional declaration shall be made necessary by such writ of attachment; and any judgment recovered in the action, in favor of the plaintiff, shall be conclusive against the defendant, who shall have been personally served with the original summons or declaration; and the execution issued thereon shall authorize the levying upon and selling of any property of the defendant so personally served, not exempt from execution, as well as the property attached, whether such attachment shall have been personally served or not.

Subsequent
proceedings.

Judgment
conclusive.

SEC. 40. The defendant shall have the same right to procure said attachment to be dissolved as in other cases; but the dissolution of such attachment shall have no effect on the proceedings other than to release the property attached.

Effect of
dissolution of
attachment.

SEC. 41. The bond to be given by the defendant for the discharge of the property so attached, shall be in a penalty at least double the amount specified in the affidavit filed in the cause, as due to the plaintiff, and shall be conditioned for the payment of any judgment, which may be recovered by the plaintiff in the cause in which such writ of attachment is issued, within sixty days after such judgment shall be rendered; or in a penalty double the appraised value of the property attached, and conditioned that such property shall be produced to satisfy any execution that may be issued, on any judgment to be recovered by the plaintiff in said cause.

Defendant's
bond for
discharge of
property.

SEC. 42. The issuing of said writ of attachment, and the proceedings under and by virtue of the same, shall in no manner stay the proceedings commenced by the original summons or declaration, but the defendant may, aside from the

Attachment
not to stay
suit.

proceedings made necessary by such attachment, proceed in the cause in the same manner as though no attachment had been issued.

Attachment
against
foreign
corporation.

SEC. 43. In suits commenced by attachment in favor of a resident of this State, against any corporation created by or under the laws of any other state, government or country, if a copy of such attachment, and of the inventory of property attached, shall have been personally served on any officer, member, clerk or agent of such corporation within this State, the same proceedings shall be thereupon had, and with the like effect, as in case of an attachment against a natural person, which shall have been returned served in like manner upon the defendant.

Action for
taking timber,
trespass on
lands, etc.,
may be com-
menced by
attachment.

SEC. 44. In all cases where a party has a right of action for the taking of timber, or other trespass on lands, or for any injury to lands, where the tort is waived and an action of assumpsit is brought therefor, the plaintiff may commence his suit by attachment against the property of the defendant as in other cases, and his affidavit for such attachment shall state the amount due him as near as may be, and the fact that the damages are unliquidated shall not prevent the bringing and maintaining of such writ.

Action for
trespass on
state lands.

SEC. 45. Whenever a cause of action shall have accrued to the State for any trespass committed upon any of the lands owned or held in trust, or otherwise, by the State; and whenever the prosecuting attorney, or any person duly authorized to prosecute for such trespass, shall make an affidavit that any person, naming him, has committed such trespass on any of such lands, as he verily believes, and stating, as near as may be, the amount of damages occasioned thereby, and that he is either not a resident of this State, or has absconded therefrom, or is about to abscond, to avoid the service of process, and shall present the same to the clerk of the circuit court in which such lands are situate, a writ of attachment shall be issued, and such affidavit be attached thereto, as the commencement of suit against such alleged trespasser, in the same form, as nearly as applicable, as provided in this chapter, and all the provisions of this chapter, and the practice under the same shall be applicable to regulate the proceedings therein, and to make the same effectual.

Affidavit.

Writ of
attachment.

Practice.

Action
against
itinerant
venders.

SEC. 46. The right to bring action against itinerant venders by attachment in the manner and form provided for in section eleven of act one hundred ninety-one of the Public Acts of nineteen hundred one, is preserved.

Discharge of
attachment.

SEC. 47. Any attachment on real estate shall be discharged upon the record thereof by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the plaintiff, his personal representatives or assigns, or his attorney of record in said cause, duly acknowledged, specifying that such attachment has been removed or otherwise satisfied or discharged; or upon the

presentation to such register of deeds of the certificate of the circuit court for the county, signed by the clerk of said court and under seal thereof, certifying that it has been made to appear to said court that said attachment has been duly removed or otherwise settled.

Dissolution of Attachments.

SEC. 48. In all cases where a writ of attachment has been or shall be issued and served under the provisions of law, it shall be lawful for any defendant whose property may be attached by virtue of such writ, to apply to the judge of the circuit court or to the circuit court commissioner of the county where such writ issued, for a dissolution of such attachment; which application shall be in writing, and shall contain the reasons for such application. Application for dissolution.

SEC. 49. Upon the presentation of such application, the judge or said commissioner shall issue a citation to the plaintiff in attachment, requiring him to show cause on a day and at a time and place in said citation to be named, before the said judge or commissioner, why the said attachment should not be dissolved, and the property be restored to the defendant in attachment. Citation to plaintiff.

SEC. 50. The citation shall be served three days at least before the return day thereof, by delivering a copy thereof to the plaintiff in attachment (or to either of them, if there be more than one), if found within the county, and if not, then the same may be served upon the agent or attorney of the plaintiff, by the sheriff, either of his deputies, or any constable or other person authorized by such judge or commissioner, and on the return day thereof, or at such other day thereafter as the judge or commissioner shall appoint for that purpose, he shall proceed to hear the proofs and allegations of the parties; and if said judge or commissioner shall be satisfied that such plaintiff had not a good and legal cause for suing out such writ, the said judge or commissioner may order such attachment to be dissolved, and the property attached to be restored to the defendant, and may, at his discretion, require the said defendant to enter his appearance to the plaintiff's action prior to the dissolution of such attachment. Service of citation.

SEC. 51. The judge or commissioner shall have full power to issue subpoenas, and if necessary, attachments to compel the attendance of witnesses to testify in such cases, and may, in his discretion, require the party moving for such dissolution to give security for the costs of such proceedings; and may order the costs of such proceedings to be paid by the party against whom the decision shall be in the premises, and may issue execution therefor, returnable in sixty days from its date. Hearing.

Appeal.

SEC. 52. Either party conceiving himself aggrieved by the determination, order or judgment of any circuit court com- Dissolution of attachment.

Costs.

missioner under the provisions of this chapter, may appeal therefrom to the judge of the circuit court for the same county, and a return may be compelled, and the same proceedings shall be thereupon had as near as may be and with the like effect as in cases of appeal from judgments rendered before justices of the peace, and costs shall be awarded and collected in the circuit court in the same manner, and on perfecting the said appeal said attachment proceedings and the levy thereunder shall be held in the same condition and of the same force and validity as when said proceedings for a dissolution of said attachment were commenced, and the officer executing said attachment shall continue to have the same rights and duties under said attachment as regards the property attached as if said proceedings had never been commenced, and any order or judgment made by such commissioner dissolving said attachment shall have no force or effect to release the attached property from the attachment levy until the same shall be affirmed by the circuit judge, if appealed from, and no such order shall be issued in any case by any commissioner until the expiration of five days after the making of the same; and the said circuit judge shall also have full power and jurisdiction over said cause and proceedings to hear and determine the same and render judgment therein, as if the said proceedings had been originally commenced before the said circuit judge thereof.

CHAPTER XXVII.

Of the Action of Replevin.

When replevin may be brought.

SECTION 1. Whenever any goods or chattels shall have been unlawfully taken, or unlawfully detained, an action of replevin may be brought for the recovery thereof, and for the recovery of the damages sustained by such unlawful taking or detention, except in the cases hereinafter excepted.

When does not lie.

SEC. 2. No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine, in pursuance of any statute of this State.

Idem.

SEC. 3. No replevin shall lie at the suit of the defendant in any execution or attachment, to recover goods or chattels seized by virtue thereof, unless such goods or chattels are exempted by law from such execution or attachment; nor shall a replevin lie at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken or detained.

How commenced.

SEC. 4. Actions of replevin shall be commenced by writ, which shall be in the form prescribed by rule of the supreme court.

Affidavit to be attached.

SEC. 5. Such writ shall not be executed in any case, unless the plaintiff in the action, or some other person having a knowledge of the facts, shall make and annex to the writ an affidavit, stating that the plaintiff in such action is then law-

fully entitled to the possession of the property described in the writ; that the same has not been taken for any tax, assessment or fine, levied by virtue of any law of this State; nor seized under any execution or attachment against the goods and chattels of such plaintiff, liable to execution; and that such goods and chattels are unlawfully detained by the defendant in such writ.

SEC. 6. Upon the receipt of such writ, with the affidavit hereinbefore required annexed, the sheriff shall proceed to seize and take into his custody the property described therein, and for that purpose may break open any house, stable, out-house or other building in which such property may be concealed, having first demanded deliverance thereof at the building or place where the same is concealed. How writ executed.

SEC. 7. The officer executing the writ shall cause the property so seized to be appraised by one or more disinterested persons, on oath to be administered by him, as soon as may be after the taking thereof on such writ. Appraisal.

SEC. 8. Before the officer shall deliver such property to the plaintiff, such plaintiff or some one in his behalf, shall execute a bond to such officer and his assigns, with the addition of his name of office, with sufficient sureties, to be approved by such officer, in a penalty not less than one hundred dollars, and at least double the appraised value of such property; conditioned that the plaintiff will prosecute the suit to effect, and that if the defendant recover judgment against him in the action, he will return the same property, if return thereof be adjudged, and will pay the defendant all such sums of money as may be recovered by such defendant against him in the said action. Bond to be given before delivery of property.

SEC. 9. If the plaintiff shall fail to cause such bond to be executed and delivered to the officer within twenty-four hours after the appraisal of such property, or if the defendant or some one in his behalf, at any time before the delivery of the property to the plaintiff, shall execute a bond to such officer and his assigns, with the addition of his name of office, with sufficient sureties, to be approved by such officer, in a penalty not less than one hundred dollars, and at least double the appraised value of such property, conditioned that if the plaintiff recover judgment against him in the action he will produce and surrender the same property to the plaintiff, if such surrender be adjudged, and will pay the plaintiff all such sums of money as may be recovered by such plaintiff against him in the said action, the officer shall return the property to the same person from whom he took it; and the property shall in no case be delivered to the plaintiff without the consent of the defendant in writing, until the expiration of forty-eight hours after the appraisal thereof, and notice of such appraisal shall be given to the defendant: *Provided*, That if either party, before the delivery of the property by the officer to the opposite party, shall make and present to such officer an affidavit, setting forth that the property replevied, or any part thereof, has an especial value to him that Failure to execute bond.
Bond for production of property, etc.
Return of property.
Provido, especial value of property.

cannot be satisfied in money, together with a notice in writing that the question of the custody thereof will be submitted to the judge of the circuit, or a circuit court commissioner of the county, at a time and place therein stated, not exceeding five days from the date thereof, and shall serve upon the opposite party, or his attorney, a copy of such affidavit and notice, at least two days before the time of hearing mentioned, the officer shall retain custody of such property until the time mentioned in such notice, and until the order of such judge or commissioner thereon. Such judge or commissioner, on proof of service of said affidavit and notice, shall hear the claims of the respective parties, and by order under his hand, award the possession of such property, pending the suit, to either party, on the execution of a bond as herein required, as he shall deem just. Any bond given by the defendants herein provided shall be filed in the office of the clerk of the court from which the writ issued on or before the return day of such writ.

Award of possession.

How defendant summoned.

SEC. 10. The officer shall summon the defendant according to the command of the writ, by delivering to him personally a copy of such writ, if such defendant can be found; and if he cannot be found, then by leaving such copy at his usual place of abode, with some person of proper age.

Recovery of goods or value of goods not found.

SEC. 11. If the goods and chattels specified in any writ of replevin shall not be found, or shall not be delivered to the plaintiff, he may proceed in the action for the recovery of the same, or the value thereof.

Return of writ.

SEC. 12. The sheriff shall return the writ at or before the return day thereof, with the affidavit thereto annexed, and the names of the persons who executed the bond taken by him from the plaintiff, and their places of residence; and he shall state in his return in what manner he executed the writ; and if the goods and chattels specified therein shall not have been replevied, he shall state in his return the cause thereof.

Exceptions to sureties.

SEC. 13. Whenever any officer, upon the execution of a writ of replevin, shall take a bond from the plaintiff or defendant, pursuant to the provisions of sections eight or nine of this chapter, he shall, within two days after taking such bond, notify the opposite party or his attorney, or in case of bond given by the plaintiff the person from whose possession the property was taken, of the amount of such bond and the names of the sureties thereon; and if the party for whose benefit such bond is taken shall not be satisfied with the sufficiency of the sureties taken on such bond by the officer, on the delivery of the property to the opposite party he may, at any time after the taking of such bond, but not more than ten days after the receipt of notice thereof as aforesaid, serve upon such officer a notice that he excepts to such sureties, and such officer shall give notice thereof to the party giving such bond, or his attorney.

Justification of sureties.

SEC. 14. Within twenty days after service of such notice on the officer, the sureties in the bond so executed by the

plaintiff or the defendant, shall each justify by making an affidavit that he is a freeholder in this State and is worth double the amount of the penalty of such bond over and above all demands and legal exemptions, or within the same time a new bond similar to that required by sections eight or nine of this chapter, as the case may be, shall be executed with new sureties, who shall justify in the same manner herein provided: *Provided*, That the party in whose favor such bond is taken may, at any time after the taking of such bond, make a motion in such suit that the court order a new bond to be given, to be approved by the court, or officer hearing such motion. Such motion may be heard in open court, or by the circuit judge at chambers, or upon the order of such judge, by a circuit court commissioner, and such court, judge, or circuit court commissioner on sufficient cause shown, may order such new bond to be given, and in default thereof may make such further order for the custody of the property pending the suits as the court or such officer may deem necessary to protect the rights of the parties.

Proviso,
motion for
new bond.

SEC. 15. Such affidavits, and such bond when executed, shall be filed in the office of the clerk of the court to which the writ shall have been returned, and notice thereof shall be served on the defendant or his attorney, within the twenty days herein specified.

Affidavits, etc.,
to be filed.

Notice.

SEC. 16. If sureties shall not justify, or if such new bond shall not be executed and filed, and notice thereof given as herein provided, the court shall, at the next term after such default, render judgment of discontinuance against the plaintiff, and such other judgment as the state and nature of the case may require, in order to restore to the defendant the property replevied, and to compensate him for his damages.

Judgment of
discon-
tinuance.

SEC. 17. But the court may allow the plaintiff to file such new bond, with sureties, who shall justify in the same manner herein prescribed, at the term at which application for such judgment is made, on such reasonable terms as the court shall impose; and upon such bond being filed, the cause shall proceed.

Court may
allow new
bond filed.

SEC. 18. If no exception shall be taken to the sureties in the bond given by a plaintiff in replevin, as herein provided, the sheriff shall be discharged from all liability for the sufficiency of such sureties; and the bond of the plaintiff shall be held by such sheriff for the benefit of the defendant, and shall be assigned to such defendant or his personal representatives, if judgment be rendered for him in such action.

When sheriff
discharged
from all
liability.

SEC. 19. If such exception shall have been taken, and judgment of discontinuance shall be rendered against the plaintiff for his sureties not justifying the sheriff shall be liable for the sufficiency of such sureties, as provided by law; and such sheriff shall be entitled to the same remedy on the bond taken by him, as in cases of bonds given on the arrest of a defendant in personal actions; and all the provisions of law respecting the staying of proceedings against the sheriff, shall

Liability of
sheriff in
certain cases,
and remedy.

be applicable to actions by the sheriff on such replevin bond, and to actions against him in relation thereto.

Proceedings
on return
of writ.

SEC. 20. If the sheriff return to the writ of replevin that the defendant has been duly summoned in either of the modes hereinbefore prescribed, the plaintiff shall declare within the same time as in personal actions, and the further practice and proceedings in the case shall be the same as in actions begun by summons.

Form of
declaration.

SEC. 21. It shall be sufficient for the plaintiff in his declaration, whether the original taking was lawful or otherwise, to allege with requisite certainty of time, place and value, that the defendant received the property to be delivered to the plaintiff when thereunto afterwards requested, and that the defendant, although requested so to do, has not delivered the same to the plaintiff, but has unlawfully detained the same, to the damage of the plaintiff such sum as he may specify.

Unnecessary
to allege place
of detention.

SEC. 22. It shall not be necessary for the plaintiff to state in his declaration, a place certain within the township, city or village, as that where the property was detained.

Plea and
notice.

SEC. 23. The defendant may plead the general issue to such declaration, which shall be in the same form as in personal actions, and shall put in issue not only the detention of the property, but also the property of the plaintiff therein, and his right to the possession thereof at the time of the commencement of the suit, and under such plea the defendant may give notice of any special matter of defense to the action.

Assessment of
damages for
plaintiff.

SEC. 24. If, upon the trial of the cause, the verdict be in favor of the plaintiff, the same jury shall assess the damages which he has sustained by the unlawful taking and detention, or by the unlawful detention of the property; but if judgment pass for the plaintiff by default, or upon an issue of law, the damages may be assessed by the court, in the same manner as in personal actions.

Special
property,
part owner-
ship, or lien.

SEC. 25. When either of the parties to an action of replevin, at the time of the commencement of the suit, shall have only a lien upon, or special property or part ownership in, the goods and chattels described in the writ, and is not the general owner thereof, that fact may be proved on the trial, or on the assessment of value, or on the assessment of damages, in all cases arising under this chapter; and the finding of the jury, or court, as the case may be, shall be according to such fact, and the court shall thereupon render such judgment as shall be just between the parties.

Judgment in
case of non-
delivery
of goods.

SEC. 26. If the goods and chattels specified in the declaration, shall not have been replevied and delivered to the plaintiff, such plaintiff, in case he shall recover upon the whole record, shall be entitled, in addition to his damages and costs, to a further judgment that such goods and chattels be replevied and delivered to him without delay; or in default thereof, that such plaintiff do recover from the defendant the value of such goods and chattels, as the same shall have been assessed.

SEC. 27. The execution to be issued upon such judgment shall command the sheriff to levy the plaintiff's damages and costs, of the goods and chattels, lands and tenements of the defendant, as in other executions against property; and also to replevy the goods and chattels described in the declaration, which shall also be specified in the execution, and to deliver them to the plaintiff, if they can be found within his county, and if the same cannot be found, then that he levy the value of such goods and chattels, specifying the same, together with the aforesaid damages and costs, of the goods and chattels, lands and tenements of the defendant, as above provided.

Execution in such case.

SEC. 28. The sheriff shall proceed in the same manner to collect any monies directed to be collected upon such execution, as upon executions against property in personal actions, and he shall possess the same powers in respect to the replevying of the property described therein, as are herein provided upon the execution of writs of replevin; and if the goods and chattels described in the execution, are replevied and delivered to the plaintiff, they shall be irrepleviable.

Powers and duties of sheriff.

SEC. 29. If the property specified in the writ shall have been delivered to the plaintiff, and the defendant recover judgment by discontinuance or nonsuit, such judgment shall be, that the defendant have return of the goods and chattels replevied, unless he shall elect to waive such return as hereinafter provided; and also that he recover the damages sustained by him by reason of the detention of such goods and chattels, which damages shall be assessed by a jury in the proper court.

Judgment for defendant on non-suit, etc.

SEC. 30. Whenever the plaintiff or defendant shall be entitled to a return or surrender of the property replevied, instead of taking judgment for such return or surrender as above provided, he may take judgment for the value of the property replevied, in which case such value shall be assessed on the trial, or upon the assessment of damages, as the case may be, subject to the provisions of section twenty-five of this chapter. And in such case he shall be entitled to a judgment against the sureties in the bond given by the opposite party, on the delivery of the property to him by the officer, as well as against the principal. When judgment shall be rendered against a party and his sureties, pursuant to the provisions of this section, any execution issued thereon shall direct the officer to whom it is directed to make the amount thereof out of the goods, chattels, lands and tenements of the principal, naming him, and for want thereof, out of the goods, chattels, lands and tenements of the sureties.

Judgment for value of property.

Judgment against sureties on bond.

Execution to be first levied on property of principal.

SEC. 31. Whenever any damages shall be assessed, pursuant to any provisions contained in this chapter, the same notice thereof shall be given to the adverse party, as is required by law, and the practice of the court in the like cases in personal actions.

Notice of assessment of damages.

SEC. 32. If the property specified in the writ shall not have been replevied and delivered to the plaintiff, and the

Judgment for costs only.

defendant recover judgment, such judgment shall be for costs only.

Effect of
judgment
for return.

SEC. 33. Whenever judgment shall pass against the plaintiff in replevin, whether by default or otherwise (except when the case shall be dismissed by reason of some default in the writ or the service thereof, or in the affidavit), and a return of the property is awarded, no writ of second deliverance shall be allowed, nor shall any second or other writ of replevin be brought for the same cause, but the plaintiff in replevin shall not thereby be barred from bringing an action for the same property, unless the judgment in the action of replevin shall have passed against him on the merits.

Property held
subject to
attachment in
certain cases.

SEC. 34. If any goods or chattels which are replevied, had been attached, they shall, in case of judgment for a return, be held liable to the attachment, until final judgment in the suit in which they were attached, and for thirty days thereafter, in order to their being taken in execution; and if such final judgment be rendered before the return of the property, or if the property when replevied was seized and held on execution, it shall be held subject to the same attachment or seizure for thirty days after the return, in order that the execution may be served thereon, or the service thereof completed, in like manner as it might have been if such property had not been replevied.

Who may
have action
on bond.

SEC. 35. If any writ of return or other execution issued in favor of either party in the action shall be returned unsatisfied in whole or in part, the party in whose favor such writ is issued, or his representatives, may have an action upon the bond executed by or on behalf of the opposite party, to recover against the obligors therein the value of the property replevied, and the moneys, damages and costs awarded to such party and such bond shall be assigned to such party, so entitled to an action thereon, or his representatives, on their request.

Proceedings.

SEC. 36. In such action the plaintiff shall assign breaches of the condition of such bond as in other cases; and the return of the sheriff to the execution issued in the action of replevin shall be evidence of such breach; the amount recovered in such action of replevin, and remaining uncollected, shall be the measure of the damages, if the value of the property replevied shall have been so recovered, and if not so recovered and a return or surrender thereof shall have been awarded, such value shall be added to the damages and costs recovered in the action of replevin, and the amount of such value, damages and costs, remaining uncollected, shall form the measure of damages.

Measure of
damages.

Mitigation
of damages.

SEC. 37. In any action prosecuted on such bond given by either party in action of replevin for the deliverance of any property, the defendant may show, in mitigation of the damages, that the obligee in such bond had only a lien upon it, or special property or part ownership in said property at the time of commencement of suit in replevin, and that the de-

fendants, or either of them, had at the same time a part ownership or other valuable interest in said property; and if such lien, special property, part ownership, or other interest of said obligee, with interest thereon, amount to less than the value of the property replevied, a corresponding reduction shall be made from such value.

Replevin of Beasts Distrained.

SEC. 38. Any person whose beasts are distrained or impounded, in order to recover any penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for any damages alleged to have been done by them, may have a writ of replevin therefor out of the proper court, and the same proceedings shall be had thereon as in other cases of replevin, except as hereinafter provided. Proceedings when beasts are distrained, etc.

SEC. 39. Such writ shall not be executed in any case, unless the plaintiff in the action, or some person knowing the facts, shall make and annex to the writ an affidavit stating therein that the beasts, describing them, have been distrained or impounded, and are detained by the defendant, and that the plaintiff therein is the owner of such beasts, or that he has a lawful right to the possession thereof. Affidavit to be annexed.

SEC. 40. The writ shall be served, and the property shall be appraised, and before delivery thereof to the plaintiff, a bond shall be given in like manner, and with the same effect as in other cases of replevin; but such property shall not be removed by the officer until such bond shall be given; and if such bond be not given within the time limited for that purpose, the property shall be relinquished by the sheriff, and such failure shall be deemed a discontinuance of the suit by the plaintiff. Bond. Failure to give bond.

SEC. 41. If the beasts shall be replevied and delivered to the plaintiff, and judgment of nonsuit or of discontinuance be rendered against the plaintiff, or if it appear on the trial that the beasts were lawfully distrained, the defendant shall have judgment for such sum as shall be due from the plaintiff, for the penalty or forfeiture, or for the damages for which the beasts were impounded, together with all the lawful fees, costs, charges and expenses incurred by reason of the distress, to be assessed as in other cases, and also his costs of the action of replevin. Judgment for defendant.

SEC. 42. If the plaintiff shall recover judgment against the defendant by default, or if it shall appear upon the trial that the beasts were distrained without any sufficient or justifiable cause, the plaintiff shall recover his damages caused by the unlawful detention of such beasts to be assessed as in other actions of replevin, together with his costs of suit. Judgment for plaintiff.

CHAPTER XXVIII.

Garnishment in Courts of Record.

Garnishment,
when lies.Affidavit
for writ.

Issue of writ.

Appearance
and dis-
closure.Liability of
garnishee.

SECTION 1. In all personal actions arising upon contract brought in the several courts or in municipal courts of civil jurisdiction, whether commenced by declaration, writs of *capias*, summons or attachment, and in all cases where there remains any sum unpaid upon any judgment or decree rendered in any of the several courts hereinbefore mentioned or upon any transcript of a judgment filed in said courts, if the plaintiff, his agent or attorney, shall file with the clerk of said circuit court at the time of, or after the commencement of suit, or at any time after rendition of judgment or decree or the filing of a transcript of judgment, an affidavit stating that he has good reason to believe, and does believe, that any person (naming him) has property, money, goods, chattels, credits or effects in his hands or under his custody or control, belonging to the defendant or any or either of the defendants, or that such person is indebted to the defendants, or any or either of the defendants, whether such indebtedness is due or not, and that the principal defendant (naming him or them), is justly indebted to the plaintiff on such contract, judgment, decree or transcript, in a given amount, over and above all legal set-offs and that the plaintiff or affiant is justly apprehensive of the loss of the same, unless a writ of garnishment issue to the aforesaid person, a writ of garnishment shall be issued, sealed, and tested in the same manner as writs of summons, and directed to the sheriff, reciting the commencement of said suit, or the rendition of judgment or decree against the principal defendant, or any or either of the defendants, or the filing of a transcript of judgment, and the filing of the affidavit aforesaid, and thereupon commanding said sheriff to summon such person to appear before said court on or before a day to be named therein, which day shall not be less than fourteen days from the date of issuing the same, to make disclosure in writing under his oath to be filed with the clerk of said court, touching his liability as garnishee of the principal defendant, or any or either of the defendants (naming him or them), as charged in said affidavit, and thenceforth pay no money and deliver no property to the principal defendant, or any or either of the defendants, and of said writ make due return.

SEC. 2. From the time of the service of such writ, the garnishee shall be liable to the plaintiff to the amount of property, money, goods, chattels and effects under his control, belonging to the principal defendant, or of any debts due or to become due from such garnishee to the principal defendant, or of any judgment or decree in favor of the latter against the former, and for all property, personal and real, money, goods, evidences of debt, or effects of the principal defendant, which such garnishee defendant holds, by conveyance, trans-

fer or title that is void as to creditors of the principal defendant, and for the value of all property, personal and real, money, goods, chattels, evidences of debt or effects of the principal defendant, which such garnishee defendant received or held by a conveyance, transfer, or title that was void as to creditors of the principal defendant; and such garnishee defendant shall also be liable on any contingent right or claim against him in favor of the principal defendant.

SEC. 3. Unless the plaintiff in such action shall within ten days after notice is served upon him or his attorney, of the filing of the garnishee's disclosure with the clerk of the court, file special interrogatories thereto, or file a demand for an examination of such garnishee before the judge of the court or a circuit court commissioner, such disclosure shall be deemed sufficient unless the judge or court on application and showing shall extend the time for filing such interrogatories or demand for such examination.

Special Interrogatories.

SEC. 4. If special interrogatories shall be filed to such disclosure as aforesaid, the garnishee or his attorney in such action shall be served with a copy of the same, together with a notice from the plaintiff or his attorney that such garnishee is required to answer such interrogatories in writing within ten days after such service; said garnishee shall answer the same on oath and file such answer with the clerk of said court within said ten days: *Provided*, Such time may be extended on application and showing to said court. If plaintiff shall file in said cause a demand for the examination of such garnishee before said judge or a circuit court commissioner, and shall cause a copy of the same to be served on such garnishee defendant, with a notice from the plaintiff or his attorney requiring such garnishee to appear before the judge or a circuit court commissioner, at a time and place to be named in such notice, not less than three nor more than ten days after service of such notice, which time may be enlarged by the judge or commissioner on special cause shown, and submit to an examination, on oath, concerning all matters of his liability as such garnishee under this chapter, which copy shall be served, and such service proved when required, in the same manner as in cases of service of a declaration in suits commenced by declaration; such garnishee defendant shall appear and submit to such examination as required by such notice. And if such garnishee shall fail to appear for examination at the time and place appointed by such notice, or if such garnishee shall fail or refuse to file his answers to such written interrogatories as required by this chapter, or if such answers are not full and responsive to such written interrogatories, the judge of the court, or a circuit court commissioner, upon application of the plaintiff, shall make an order that the garnishee appear before him and submit to such examination at a time and place to be named in such order. The testimony given on such personal examination shall be reduced to writing by the commissioner or judge,

Copy of special interrogatories to be served.

Proviso, time extension.

Demand for examination.

Appearance.

Failure to appear or refusal.

Testimony to be reduced to writing.

signed by the garnishee, and filed with the clerk of the court, and the same, and the answer to the written interrogatories, in cases where written interrogatories are filed and answered as above, shall be deemed part of the disclosure of such garnishee. The provisions of this section shall apply to foreign corporations doing business within this State, and service shall be valid when made upon the resident agent of said foreign corporation: *Provided, however,* That this section shall not be construed to require the personal attendance for examination of any officer, or agent of such foreign corporation not found within this State, but the personal examination of any officer, or agent of such corporation without this State, may be had in the state of his residence, in the same manner as depositions are taken of parties without the State.

Failure of garnishee to file disclosure, etc.

Entry of default.

Judgment and execution.

How default set aside.

Time for disclosure enlarged.

Notes, etc., belonging to principal defendant.

SEC. 5. If such garnishee does not appear and file his disclosure with the clerk of the court as aforesaid, on or before the return day of such writ, or if the time for so doing be extended, as hereinafter provided, then at the expiration of such extended period, or if special interrogatories shall be filed and served as provided by this chapter, and such garnishee does not file his answers thereto as required by the notice thereon, or if demand for his examination before a judge or a circuit court commissioner be filed and a copy served as provided by this chapter, and such garnishee does not appear and submit to an examination, as required by the notice indorsed thereon, the default of such garnishee for want of appearance and disclosure, or want of answers to such special interrogatories, or for want of appearance and submission to such examination, may be entered in the cause, and made absolute as in other personal actions, and in case a final judgment against the principal defendant, judgment may be rendered and execution issued against such garnishee, his goods and chattels, lands and tenements, for such amount as the plaintiff shall recover against the principal defendant. Such defaults may be set aside for any cause for which defaults for want of appearance and plea may be set aside upon such terms as the court shall impose.

SEC. 6. A circuit court commissioner of the county where such proceedings shall be commenced, or the circuit judge, may, for proper cause shown, by affidavit of any credible person, make an order extending the time for the garnishee to file his disclosure, and such order shall be filed with the clerk of the court, and a copy thereof served on the plaintiff, or his attorney, but such time shall not be extended more than three times, except by consent.

SEC. 7. If upon the disclosure, or the trial of the statutory issue hereinafter provided for, it shall appear that the garnishee had in his possession at the time of the service of the process upon him, or thereafter, any promissory note, bill of exchange, order, receipt, bond, or other written promise for the payment of money, or the delivery of property belonging

to the principal defendant, the garnishee shall deliver the same to the commissioner or other person appointed by the judge or commissioner as a receiver, if by him or the courts so ordered; and it shall be his duty, under the direction of the court to collect and apply the proceeds upon any execution in favor of the plaintiff and against the garnishee, and to pay him the surplus, if any.

Proceeds, how applied.

SEC. 8. If it shall appear, as aforesaid, that the garnishee had in his possession, as aforesaid, any personal property of the principal defendant, and that the same is subject to any pledge, lien or mortgage, and at the time of the disclosure has not been sold by the garnishee, the same shall be delivered by the garnishee to the commissioner or receiver, if the commissioner or judge so order, to be by him disposed of under the direction of the court, if a greater amount than the incumbrance can be obtained therefor, and after paying the amount of such incumbrance to apply the balance as aforesaid, or the plaintiff may be allowed by like order to pay or tender the amount due the garnishee.

Property subject to mortgage, etc.

Tender of plaintiff.

SEC. 9. If, in either of the cases specified in the two preceding sections, the garnishee shall refuse to comply with the order of the judge or commissioner for delivering, such garnishee shall be held liable for the amount of the note, order, choses in action, or personal property, upon the report of the commissioner of such refusal and amount, and judgment shall be rendered and execution issued accordingly, as upon default.

Liability of garnishee for refusal to commission.

SEC. 10. In either of said cases the judge, commissioner, or receiver, shall add to his report a statement of any order made by him, and the delivery to him of any property or thing, with a description and valuation thereof, to be ascertained by appraisal or inquiry upon oath, or in such mode as the commissioner or judge shall direct.

Report to include statement of order.

SEC. 11. The affidavit for the writ of garnishment shall be held and considered as a declaration by the plaintiff against the garnishee as defendant; and upon the filing of the garnishee disclosure, or upon filing of the answers to such written interrogatories, in cases where the same are required and filed, or upon the filing of the report of the testimony or statement made by such garnishee on such personal examination in cases where such examination is had, the matter of such affidavit shall be considered as denied, except so far as the same is admitted by such disclosure, answers to interrogatories or report, which admission shall have the effect of admissions in a plea, and also shall be prima facie evidence of the matters therein admitted. And thereupon a statutory issue shall be deemed framed for the trial of the question of the garnishee's liability to the plaintiff. And judgment may be rendered against such garnishee defendant, as upon declaration and plea, or on plaintiff's motion to the court at any time after final judgment against the defendant in the principal

Affidavit held to be declaration.

Effect of disclosure.

Proviso,
demand
for trial.

cause, without further notice to such garnishee: *Provided, however,* If such plaintiff or such garnishee defendant shall within ten days after filing of such disclosure, answer, or statement, file with the clerk of such court a demand for trial of the cause, said cause shall stand for trial in the manner provided by this act. A jury may be had on demand of either party. The time for filing said demand may be extended by the court upon application and showing.

Judgment for
plaintiff before
garnishment.

SEC. 12. In case judgment shall have been rendered in favor of the plaintiff in the principal action, before the commencement of such garnishee proceedings, or before the framing of such statutory issue, such issue shall be brought to trial in the same manner as a personal action; but in case judgment shall not have been so recovered in the principal action, then such statutory issue shall stand for trial at the term at which the issue against the principal defendant shall be tried and finally disposed of; and if the latter issue be determined against the plaintiff at any time thereafter, upon motion of the garnishee, judgment shall be entered in his favor upon the statutory issue, and for costs against the plaintiff, reciting the framing of such issue, and the judgment in favor of the principal defendant.

Judgment
against
garnishee.

When
statutory
issue triable.

SEC. 13. If the plaintiff obtain judgment against the principal defendant, in the circuit court, and the latter does not, within two days thereafter, serve upon the garnishee notice of motion for new trial, or of his intention to remove the cause to the supreme court, the statutory issue shall stand for trial at any time thereafter the same as in other cases.

Evidence
on trial.

SEC. 14. Upon the trial, the report or any other competent evidence supporting or controverting it, may be offered by the plaintiff, and the garnishee may offer any evidence not controverting the disclosure, or in the discretion of the court he may be allowed to show errors and mistakes in his disclosure, and may also show the amount of the judgment and costs against the principal defendant.

Amount of
judgment
against
garnishee.

SEC. 15. If by the verdict the garnishee be found liable, as such, for an amount equal to or greater than the judgment and costs against the principal defendant, judgment shall pass only for the latter amount; in other cases it shall pass for the amount of liability ascertained by the verdict.

Costs.

SEC. 16. If on such trial judgment shall be rendered against the garnishee for a greater amount, or for other property than he would have been chargeable for on his disclosure, it shall carry full costs, otherwise the garnishee shall recover costs; execution shall issue as in ordinary cases.

Trial of
statutory
issue after
confirmation
of principal
judgment.

SEC. 17. Whenever, in case of recovery by the plaintiff against the principal defendant, he shall have removed the same to the supreme court, and the judgment shall have been affirmed, the statutory issue, in garnishment, shall stand for trial at any time thereafter, the same as in other cases.

When in-
debtedness
of garnishee
not matured.

SEC. 18. When the garnishee shall be found indebted to the principal defendant, and the time of payment shall not have

arrived, no judgment shall pass until after the time of maturity, which shall be named in the finding or verdict.

SEC. 19. When the garnishee shall be chargeable, by reason of any goods or chattels, other than money, which he holds or is bound to deliver to the principal defendant, not subject to any lien, judgment shall be rendered and execution issued against the garnishee for so much thereof as may be necessary to satisfy the same, and he shall make delivery to the officer, who shall sell and apply and account for the proceeds as usual in ordinary executions.

Judgment for property not subject to lien.

SEC. 20. If the garnishee be found to be under contract for the delivery of any specific article to the principal defendant, or to make payment therein, judgment shall be rendered and execution issued against the garnishee for so much thereof as shall be necessary to satisfy such execution, which articles shall be paid and delivered to the plaintiff according to the contract.

When under contract to deliver articles.

SEC. 21. When such specific goods were to be delivered to the principal defendant at a certain time and place, the garnishee shall not be compelled, by reason of the garnishment, to deliver at any other time and place, but may deliver as provided for in the contract, unless previously adjudged liable as garnishee.

When contract specifies time of delivery.

SEC. 22. The plaintiff shall be deemed the agent of the principal defendant for the purpose of recovering the goods, chattels and articles mentioned in the two preceding sections, and may levy his execution thereon to the amount of his debt and costs; and if no division of such goods, chattels or articles can be made, the whole may be sold; and the property unsold, and the surplus proceeds of the property sold, shall be delivered by the officer to the principal defendant on demand.

Plaintiff deemed agent of principal defendant.

SEC. 23. If any person adjudged liable as garnishee for any goods, chattels, or other property whatever, shall refuse to expose the same so that the plaintiff may levy his execution thereon, the court shall, on return thereof made by the officer, grant a rule upon such garnishee to show cause why execution should not issue against said garnishee, his own goods and estate; and upon due service of such rule, and no sufficient cause shown to the contrary, execution shall be issued against him for such sum as the court may adjudge.

When garnishee refuses to expose articles for levy.

SEC. 24. All bills of exchange and promissory notes, or other negotiable instruments, in the hands of the garnishee at the time of the service of the writ of garnishment, shall be deemed effects under the provisions of this chapter, and if it shall appear by the disclosure, that the garnishee at such time, or thereafter, and prior to the disclosure, is indebted to the principal defendant by such bill, note or negotiable instrument made payable in this State, or the parties to which, at the time of making the same, resided in this State, the judge or commissioner may issue a citation requiring the principal defendant to appear before him within ten days and

Bills of exchange, etc., deemed effects.

Citation to appear for examination.

	<p>answer on oath all interrogatories respecting the possession, transfer, or other disposition of said bills, notes or other negotiable instruments, and such order may contain the name of any other person supposed to claim an interest in such paper, so that he may appear and show that the same was transferred to him in good faith, and for an adequate consideration, before the service of the writ of garnishment; and such citation may be served by any person at least five days prior to the return day, service shown by affidavit, and annexed to the commissioner's report. Such citation shall also contain an order enjoining and restraining said principal defendant from selling, transferring, or in any way disposing of any such bill of exchange, promissory note or other negotiable instrument; and in case of any violation by said defendant of such order, he shall be deemed guilty of a contempt of the court in which such action is pending, and shall be punishable as in other cases of contempt.</p>
Service of citation.	
Restraining order.	
Violation.	
Examination.	<p>SEC. 25. The parties cited shall be examined in like manner as the garnishee, and if it shall not appear that the note or bill was so transferred the maker or acceptor shall be charged as garnishee, and the payment of the judgment rendered against him shall be a discharge from the note, or such part thereof as is equal to the amount so paid by him, together with all costs taxed in his favor.</p>
Refusal to appear on citation.	<p>SEC. 26. If the principal defendant, or other party cited shall refuse to appear upon such citation upon the filing of the report, he may be proceeded against as for a contempt, or brought before the court on a bench warrant, and fined in the discretion of the court, and held in custody until disclosure to the court, the same to be reduced to writing by the clerk and attached to the report.</p>
Use of disclosure as evidence in criminal proceedings.	<p>SEC. 27. No disclosure, as answer of any person, or any other proceeding under the provisions of this chapter, shall be used in evidence upon any criminal prosecution against such person, except upon a prosecution of the garnishee for perjury in making his disclosure.</p>
Third parties claiming property, proceedings.	<p>SEC. 28. When the answer of the garnishee shall declare that any other person than the defendant claims the indebtedness or property in his hands, or any part thereof, and the name and residence of such claimant, the court may, on motion, order that such claimant be inter-pleaded as a defendant to the garnishee action, and that notice thereof, setting forth the fact that a copy of such order in such form as the court shall direct, be served upon him; and after such service shall have been made, the garnishee may pay or deliver such indebtedness or property to the clerk of the court, and have a receipt thereof, which shall be a complete discharge from all liability to any party for the amount so paid or the property so delivered. Such notice shall be served within or without this State by any competent person, and proof of the fact of such service shall be made by affidavit and filed with the clerk of the court where such garnishee proceedings are</p>

commenced. If such personal service cannot be had, then such service shall be made as the court shall direct. Upon such service being made and proof thereof being filed in the cause, such claimant shall be deemed a defendant to the garnishee action and within twenty days shall answer, setting forth his claim or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim on the part of such defendant; for the purpose of trying the title as between the plaintiff and any defendant or defendants, and between two or more defendants so interpleaded, to the money, property or indebtedness paid to or delivered to the clerk as aforesaid, the court may order an issue to be formed and may proceed to try the same or direct the trial thereof by a jury as in other cases. Such issue may be in the form provided in this chapter for actions between the plaintiff and the garnishee; and the judgment or judgments entered therein shall have the same force and effect as in suits between the same parties relative to the same subject matter.

Claimant
deemed
defendant
to garnishee
action.

Effect of
judgment.

Issue.

SEC. 29. If the plaintiff, in addition to the allegations hereinbefore required to be contained in the affidavit for the writ of garnishment, shall set forth in such affidavit that the principal defendant is a non-resident of the county or state where the suit is commenced, or that one of the principal defendants is a non-resident of the county or State, where there is more than one principal defendant, or a foreign corporation created in any jurisdiction (naming it), the principal writ or declaration and affidavit may be filed of the day of issue, and the writ of garnishment may be served as in ordinary cases; and within sixty days after such service the plaintiff shall cause to be delivered to such non-resident defendant or defendants, or the president, secretary, cashier or treasurer of such foreign corporation residing out of this State, or upon any officer, clerk or agent residing or to be found within this State, a true copy of the principal writ or declaration, affidavit and writ of garnishment, with return of service thereon, and with a written or printed notice attached, signed by the plaintiff or his attorney, stating that said non-resident defendant or defendants, or foreign corporation, is notified to appear and defend within thirty days after such service, or default will be entered and judgment taken, and upon filing an affidavit of such service, further proceedings to judgment may be had as in ordinary personal actions. If there is more than one defendant, some of whom reside within this State, notice shall be served on the resident defendants of the time and manner of giving notice to the non-resident defendants.

Proceedings
against non-
residents.

SEC. 30. Whenever the action shall be commenced by writ of attachment against a non-resident defendant or foreign corporation, and a writ of garnishment shall issue, the same proceedings shall be had in respect to personal service upon the principal defendant, as are specified in the previous section.

Proceedings
commenced by
attachment.

Amount of judgment against garnishee.

SEC. 31. When the garnishee shall be adjudged liable as such except when it is otherwise specially provided, judgment shall be rendered and execution issue against such garnishee, his own goods and estate, for the amount of the judgment and costs against the principal defendant, if the garnishee's liability shall be for so much, otherwise for the amount thereof.

Garnishee in case of title void as to creditors.

SEC. 32. If any person garnisheed shall have in his possession any of the property aforesaid of the principal defendant, which he holds by a conveyance or title that is void as to creditors of the defendant, or if any person garnisheed shall have received and disposed of any of the property aforesaid of the principal defendant, which is held by a conveyance or title that is void as to creditors of the defendant, he may be adjudged liable as garnishee on account of such property and for the value thereof, although the principal defendant could not have maintained an action therefor against him.

Several garnishees.

SEC. 33. Two or more persons, severally liable, may be garnisheed in the same action, and their disclosures and all other proceedings shall be several and judgment shall be rendered for such sum as the court shall order, for or against each severally, and execution may issue accordingly.

Execution against principal defendant for balance.

SEC. 34. Execution may be issued by the court against the principal defendant for any balance due the plaintiff, on his judgment against such defendant, beyond the amount for which the garnishee or garnishees shall be found liable; and further execution may be issued from time to time, against such defendant, or any garnishee, as the court may order, until the satisfaction of the judgment in full.

Effect of judgment as garnishee.

SEC. 35. The judgment against any person, as the garnishee, shall acquit and discharge such garnishee, his executors or administrators, from all demands by the principal defendant, his executors or administrators, for all such moneys or property, as aforesaid, paid or delivered by the garnishee by force of such payment; and if any garnishee shall be sued therefor, or for anything done by virtue of the provisions of this chapter, he may, under the general issue, give the special matter in evidence.

When person garnisheed resides out of county.

SEC. 36. If any person named in the affidavit for the writ of garnishment shall be stated to reside out of the county in which the suit in garnishment is brought, such writ may be served by any competent person, and any execution against the garnishee shall be directed to the sheriff of any county in this State in which such person may reside. Such sheriff shall serve said execution in the manner required to be served in other cases, and shall make return of his doings to the clerk of the county from which the execution issued.

Who not adjudged garnishee.

SEC. 37. No person shall be adjudged a garnishee in either of the cases following, to-wit:

1. By reason of any money or thing received or collected by him as sheriff or other officer, by force of an execution or other legal process, in favor of the principal defendant;

2. By reason of any money in his hands as a public officer, for which he is accountable, merely as such officer, to the principal defendant;

3. Nothing in this chapter contained shall be applicable to any indebtedness of such garnishee to the principal defendant, for the personal labor of such defendant, or his family, unless such indebtedness exceed the amount allowed him as exempt under section five of chapter seventy-six of this act, and in case of such excess, only to the amount of such excess.

SEC. 38. Every garnishee shall in his disclosure be allowed to claim any off-set which he may justly have against the principal defendant, of which he could have availed himself if he had not been garnisheed, and shall be liable only for the balance after adjustment of mutual demands: *Provided*, That in such adjustment no claims for unliquidated damages for wrongs or injuries shall be considered.

Garnishee allowed set-off.

Proviso, unliquidated demands.

SEC. 39. If the garnishee shall appear and make disclosure, as before provided, he shall be allowed his costs for trial and attendance as in case of a witness, and in case an attorney is employed to prepare such disclosure such further sum as the court shall think reasonable for his counsel fees and other necessary expenses; and in case he shall be adjudged liable, the same may be taxed and deducted from the property or money in his hands, and he shall be chargeable only for the balance, and if the garnishee shall be discharged, whether by reason of his having no money or property, or because the plaintiff shall not recover judgment against the principal defendant, or for any other cause, his said costs and charges shall be paid by the plaintiff, and the garnishee may have the same taxed, and judgment and execution therefor.

Costs of garnishee allowed.

SEC. 40. If any person summoned as a garnishee, or if any officer, agent or other person who shall appear and answer for a corporation so summoned, shall, upon his disclosure or examination on oath, knowingly and wilfully answer falsely, he shall, out of his own goods and estate, pay to the plaintiff in garnishment, or to his executors and administrators, the full amount due on the judgment recovered therein, with interest, to be recovered in a special action on the case; and he shall, moreover, on conviction thereof, upon indictment, be adjudged guilty of perjury.

False answer, penalty for.

SEC. 41. A failure to recover judgment against the principal defendant, or a satisfaction of such judgment, in any manner, shall be deemed a discontinuance of all proceedings against the garnishee.

What deemed discontinuance.

SEC. 42. Any judgment or final order in a suit in garnishment may be set aside or removed to the supreme court, in like manner and with the same effect as in other personal actions.

Reversal of judgment.

SEC. 43. Any party may have an order on the commissioner for amendment of his report, or for a further report upon a

Order for amended report, etc.

motion for cause shown and after like notice as in other cases; and upon like proceedings any party may have any other order on the commissioner to which he may be entitled, at any time, in the progress of the cause.

Bond for stay
of proceedings.

SEC. 44. The principal defendant in any such action, wherein process of garnishment shall have been issued, may at any time after service of such process, and previous to the rendering of judgment thereon, file with the clerk of the court his bond, with at least two sufficient sureties, to the plaintiff as obligee in a penal sum equal to double the amount of the claim of the plaintiff, as sworn to in the affidavit filed for the writ of garnishment, and with conditions to pay any judgment obtained against the defendant or defendants in such action, and abide the order of the court therein, and which bond and the sureties thereof shall be previously

Approval.

approved by the judge of the court or circuit court commissioner, on a notice of at least twenty-four hours, to the plaintiff or his attorney, of the time and place of presenting such bond for approval; and if neither the plaintiff nor his attorney shall reside in the same city, village or township where said bond is to be presented for approval, such notice shall be a notice of at least four days, and at least one day shall be added to such notice, for each additional one hundred miles, or fraction thereof, of distance; and such judge or commissioner shall examine the defendant and sureties on oath as to their sufficiency and responsibility, and may take other evidence in relation thereto in his discretion, as either party may offer. On filing such bond so approved, with the clerk

Effect of bond.

of the court, the proceedings in garnishment shall be thereby discontinued, and the costs thereof shall abide the event of the principal suit; and if the plaintiff shall recover judgment against the principal defendant, on application to the court, execution thereon may be ordered to issue against the sureties in such bond, as well as the defendant. Whenever any proceedings in garnishment shall be discontinued, by reason of the filing of such bond, as above provided, the clerk of the court shall forthwith notify the attorney for the plaintiff in such suit, of the filing of such bond, and such attorney shall, within twenty-four hours after the receipt of such notice from the clerk, give notice in writing, to the persons against whom process of garnishment shall have been issued, that the proceedings in garnishment in such suit have been discontinued, which notice shall be served upon the attorney for the garnishee, if he shall have appeared by attorney, otherwise upon the garnishee, and may be served in the same manner as other notices are required to be served.

Notice to
garnishees.

Judgment
upon default
of principal
defendant.

SEC. 45. In all cases where the principal defendant does not appear in the cause within the time fixed by the statute and rules of court for such appearance, the plaintiff shall proceed and perfect his judgment against such principal defendant as soon as he shall be entitled thereto under the rules and practice of the court, and in default thereof such court

may, in its discretion, on motion of the garnishee defendant or any one interested in the proceedings, render judgment discontinuing such garnishee proceedings with costs against the plaintiff.

SEC. 46. All corporations of whatsoever nature, may be served and proceeded against as garnishees in the same manner and with like effect as individuals under the provisions of this chapter and the rules of law relative to proceedings against corporations: *Provided*, That when a municipal corporation is proceeded against as provided for in this chapter, judgment shall have been obtained in a court of competent jurisdiction by the plaintiff against the principal defendant before garnishment proceedings shall be commenced against such municipal corporation: *Provided further*, That in all cases of foreign corporations, if the officer or agent served shall neglect or refuse to file disclosure to said writ, as hereinbefore in this chapter provided, the default of said foreign corporation may be entered as in other cases, and upon entry of judgment against the principal defendant, judgment may be entered in said garnishee proceedings against said foreign corporation for the amount thereof, including costs: *Provided further*, That no judgment on default shall be rendered against said foreign corporation until the expiration of sixty days after the entry of judgment against the principal defendant, and the plaintiff shall within twenty days after judgment against the principal defendant, serve notice by mail on the foreign corporation at its home office that judgment had been obtained against the principal defendant; and that at the expiration of sixty days from the date of said judgment application would be made for judgment against it, as hereinbefore provided. Said notice shall be substantially as follows:

Corporations,
garnishment
of.

Proviso,
municipal
corporations.

Further
proviso,
foreign cor-
porations.

Further
proviso,
judgment
on default
against
foreign cor-
porations.

Form
of notice.

In the circuit court for the county of
....., plaintiff,

vs.

....., defendant.
....., garnishee defendant.

To said garnishee defendant:

Take notice, that on the.....day ofAnno Domini judgment for the sum of dollars including costs, was entered in said court against the above named principal defendant, and at the expiration of sixty days from the entry of said judgment, application will be made to said court for the entry of judgment against you as garnishee defendant in said cause.

Yours, etc.,

.....,
Plaintiff's Attorney.

CHAPTER XXIX.

Of the Action of Ejectment.

When may
be brought.

SECTION 1. The action of ejectment is retained, and may be brought in the cases and in the manner heretofore accustomed, subject to the provisions hereinafter contained.

Extension
of action.

SEC. 2. The action of ejectment may also be brought:

1. In the same cases in which a writ of right might formerly be brought to recover lands, tenements, or hereditaments, and by any person claiming an estate therein, in fee, or for life, either as heir, devisee or purchaser;

2. By any widow entitled to dower, or by a woman so entitled and her husband, after the expiration of six months from the time her right accrued, to recover her dower of any lands, tenements or hereditaments.

Who may
recover in
ejectment.

SEC. 3. No person can recover in ejectment, unless he has at the time of commencing the action a valid, subsisting interest in the premises claimed, and a right to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.

Who to be
defendants.

SEC. 4. If the premises for which the action is brought are actually occupied by any person, such actual occupant shall be named a defendant; if they are not so occupied, the action must be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein at the commencement of the suit; and all persons claiming any title to the premises adverse to that claimed by the plaintiff, may in all cases be made defendants in such action.

How
commenced.

SEC. 5. The suit shall be commenced in the same manner as in personal actions, except as hereinafter provided; and the names of the real claimants shall be inserted as plaintiffs, and all the former provisions of law concerning lessors of a plaintiff shall apply to such plaintiffs.

Fictitious
parties,
demises, etc.,
abolished.

SEC. 6. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendant, and the statement of any lease or demise to the plaintiff, and of an ejectment by a casual or nominal ejector, are abolished.

Declaration,
contents of.

SEC. 7. It shall be sufficient for the plaintiff to aver in his declaration, that on some day therein to be specified, and which shall be after his title or right accrued, he was possessed of the premises in question, describing them as hereinafter provided, and being so possessed thereof that the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage, any nominal sum the plaintiff shall think proper to state.

Premises, how
described.

SEC. 8. In such declaration the premises claimed shall be described with such convenient certainty, by setting forth the section or part of a section, township and range, or the

number of the lot, or otherwise, that from such description possession of the premises claimed may be delivered.

SEC. 9. If such plaintiff claims an undivided share or interest in any premises, he shall state the same particularly in such declaration. Undivided shares.

SEC. 10. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower as widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life, or for the life of another, or for a term of years, or otherwise, specifying such lives, or the duration of such term. Dower interest.
Other interests.

SEC. 11. In any case other than where the action is brought for the recovery of dower, the declaration may contain several counts, and several parties may be named as plaintiffs, jointly in one count, and separately in others. Several counts and plaintiffs.

SEC. 12. All the provisions of law relating to security for costs, shall be applicable to the action of ejectment. Security for costs.

SEC. 13. If the premises are actually occupied, the process or declaration shall be served by delivering a copy thereof to the defendant named therein, who shall be in the occupation thereof, personally, or by leaving the same with some person of proper age, at the dwelling house of such defendant, if he be absent. Service of process, etc.

SEC. 14. If the defendant, or any defendant named in the declaration or process by which the suit is commenced, shall not occupy the premises claimed by plaintiff, such declaration or process shall be served upon such defendant personally, if such defendant can be found within this State, and such service may be made in any part thereof; if such declaration or process issued therein cannot be served by reason of the defendant not being found within this State, the same proceedings shall be had as in chancery cases, in the case of absent, concealed or non-resident defendants. Personal service.
Absent defendants.

SEC. 15. Upon filing due proof of service of process, or declaration, or of the due publication of such order and compliance in all respects with the requirements of law in case of service by publication, or of the service of a copy of such order personally on such defendant within the time limited therein, if such defendant shall neglect to appear and plead within the time provided by law or rule of court, his default for not appearing and pleading may be entered as in other cases. Default for not appearing.

SEC. 16. No demurrer, plea in abatement, or plea to the jurisdiction shall be filed, but the provisions of section five of chapter fourteen shall be applicable in such cases. The defendant shall plead the general issue only as in personal actions, and under such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had as upon a plea of not guilty in the former action of ejectment. Under such plea the defendant may give in evidence any Defendant's plea.

matter, which if pleaded in the former writ of right, or action of dower, would bar the action of the plaintiff.

Statements
of title to be
attached to
pleadings.

SEC. 17. The plaintiff shall attach to his declaration, and the defendant to his plea, if he claims title, a statement of the title relied on, showing from and through whom such title was obtained, and the page and book where the same appears of record. If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not doing so within a reasonable time after demand therefor. No written evidence of title shall be introduced on the trial, unless it has been sufficiently referred to in such statement, which on motion, may be made more specific, and may be amended as other proceedings.

Right to
possession
sufficient.

SEC. 18. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises, at the time of the commencement of the suit, as heir, devisee, purchaser or otherwise.

Lease, entry,
ouster, etc.

SEC. 19. It shall not be necessary on the trial for the defendant to confess, nor the plaintiff to prove, lease, entry and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect, any of the rules of evidence in force, in regard to the maintenance and defense of the action.

Ouster to be
proved in
certain cases.

SEC. 20. If the action be brought by one or more tenants in common, or joint tenants, against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right as such co-tenant.

Verdict
upon joint
possession,
etc.

SEC. 21. If the action be brought against several defendants and a joint possession or claim of title of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

Verdict upon
several and
distinct
possessions.

SEC. 22. When the action is against several defendants, if it appear on the trial that any of them, at the commencement of the suit, occupied or claimed distinct parcels in severalty, or jointly, and that other defendants possessed or claimed other parcels in severalty, or jointly, all of which titles, possessions, or claims were derived from the same source, the jury in such case shall state particularly in their verdict the description of the parcel claimed by each of said defendants, when the said verdict shall be for the plaintiff; and in case the said several titles, claims or possessions were derived from a different source, the plaintiff shall elect at the trial, and before the testimony shall be deemed closed, against which he will proceed, and a verdict shall be rendered for the defendants not proceeded against.

SEC. 23. In the following cases the verdict shall be rendered as follows: Verdict,
how rendered
in certain
cases.

1. If it be shown on trial that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally;

2. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant;

3. If the verdict be for any plaintiffs, and there be several defendants, the verdict shall be rendered against such of them as were in the possession of the premises, or as claimed title thereto, at the commencement of the action;

4. If the verdict be for all the premises claimed, as specified in the declaration, it shall in that respect be for such premises generally;

5. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part as the same shall have been proved, with the same certainty hereinbefore required in the declaration, in the description of the premises claimed;

6. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest; and if for an undivided share in a part of the premises claimed, it shall specify such share, and shall describe such part of the premises as hereinbefore required;

7. The verdict shall also specify the estate or right which shall have been established on the trial, by the plaintiff in whose favor it shall be rendered, whether such estate be in fee, or for his own life, or for the life of another, stating such lives, or whether it be a term for years, or otherwise, and specifying the duration of such term.

SEC. 24. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be rendered that he recover his damages by reason of the withholding of the premises by the defendant, to be assessed, and that as to the premises claimed, the defendant go thereof without day. Expiration of
plaintiff's
title before
trial.

SEC. 25. The action of ejectment shall not be abated by the death of any plaintiff, or of one of the several defendants after issue and before verdict or judgment; but the same proceedings may be had as in other actions, to substitute the names of the executors or administrators, or of those who may succeed to the title of the plaintiff so dying, in which case the issue shall be tried as between the original parties; and in case of the death of a defendant, the cause shall proceed against the other defendants. Suit not to
abate by
death.

SEC. 26. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be, that the plaintiff recover the possession of the premises accord- Form of
judgment.

ing to the verdict of the jury, if there was such verdict; or if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

Writ of
possession.

SEC. 27. The plaintiff recovering such judgment shall be entitled to a writ of possession, which shall be substantially in the following form:

In the name of the People of the State of Michigan.

To the sheriff of the county of

Whereas, A. B. has lately, in our circuit court for the county of, by the judgment of such court, recovered against C. D. the following described premises, to-wit: (describing the premises recovered with like certainty as above provided), which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted as appears to us of record, and for as much as it is adjudged in the said court that the said A. B. have execution upon said judgment against the said C. D. according to the force, form and effect of his said recovery; Therefore we command you that without delay you deliver to the said A. B. possession of the said premises so recovered, with the appurtenances, and that you certify to our said court at, etc., on, etc., in what manner you shall have executed this writ. (If there be costs to be collected the proper clause may be here inserted.)

Witness, etc.

To whom
issued.

Said writ of possession may be issued to the sheriff or other proper officer of any county in this State, in which the premises recovered are situated, in all cases where such judgment of recovery shall have been or may hereafter be rendered.

Costs, how
collected of
plaintiff.

SEC. 28. Upon a judgment against the plaintiff, or one or more plaintiffs, in cases where they shall be liable for costs, execution for the collection of the same shall be issued, as upon judgments in personal actions.

Effect of
judgment.

SEC. 29. Every judgment in the action of ejectment, rendered upon a verdict, or upon default after personal service, shall be conclusive as to the title established in such action, upon the party against whom the same is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, unless the same shall be set aside or reversed.

New trials,
how granted.

SEC. 30. Except as hereinafter provided, new trials may be granted in ejectment cases for the same reasons, and in the same manner as in personal actions; but no new trial shall be granted as a matter of course.

Effect of
judgment
by default.

SEC. 31. Every judgment in ejectment rendered by default when no personal service is had, or appearance entered, shall, from and after two years from the time of rendering the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action; but within three years after the rendering of such judgment, on the application of the de-

defendant, his heirs, executors, administrators or assigns, the court may vacate such judgment and grant a new trial if such court shall be satisfied that justice will thereby be promoted, and the rights of the parties more satisfactorily ascertained and established. New trial.

SEC. 32. If the defendant in an action of ejectment, at the time of docketing the judgment therein by default, be either: Time of disability not included.

1. Within the age of twenty-one years; or
 2. Insane; or
 3. Imprisoned upon conviction of a criminal offense for any term less than for life;
- the time during which such disability shall continue, shall not be deemed any portion of the said two years; but any such person shall, on motion, be entitled to a new trial after that time, and within three years after such disability shall be removed, but not afterward.

SEC. 33. If the person entitled to such new trial shall die during the continuance of any disability, specified in the preceding section, his heirs, executors or administrators may be substituted in such action, and shall be entitled to such new trial at any time within three years after his death. Substitution of heirs, etc.

SEC. 34. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment, as herein provided; and if the defendant recover on any new trial hereby authorized, he shall be entitled to a writ of possession in the same manner as if he were plaintiff. Possession on new trial after recovery.

SEC. 35. Upon any new trial granted as herein provided, the defendant may show any matters in bar of a recovery, which he might show to entitle him to the possession of the premises if he were plaintiff in the action. Evidence on new trial.

SEC. 36. The plaintiff recovering judgment in ejectment shall also be entitled to recover damages for rents and profits of the premises recovered; but if such action be brought for the recovery of dower, the plaintiff shall be entitled to recover such damages only in the cases, and to the extent prescribed in sections eight thousand nine hundred forty-one, eight thousand nine hundred forty-two, eight thousand nine hundred forty-three and eight thousand nine hundred forty-four of the Compiled Laws of eighteen hundred ninety-seven. Damages.

SEC. 37. The plaintiff seeking to recover such damages, shall, within one year after the docketing of the judgment, make and file a suggestion of such claim with the clerk of the court in which such judgment was rendered, as a continuation of the same. Suggestion of claim of damages.

SEC. 38. Such suggestion shall be substantially in the same form as a declaration in an action of assumpsit for use and occupation, as near as may be, and may be against the defendants liable for such rents and profits, omitting those not so liable, and a notice shall be annexed to said sug- Form of suggestion.

gestion in form, as near as may be, such as is required by law to be attached to a declaration in suits commenced by declaration, notifying the defendant that he is required to plead to such suggestion within fifteen days after service thereof, and a copy of such suggestion and of such notice shall be served on the defendants named therein, in the same manner as in cases of declarations, in personal actions.

Defendants'
pleading, etc.

SEC. 39. Such defendants may plead to such suggestion, and give notice of any special matters in bar of such claim, except such as were or might have been controverted in such action of ejectment, in the same manner as in personal actions; and such defendants may show on the trial, in bar or in mitigation of the damages claimed by the plaintiff, a recovery by such defendants, or by any other person, of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment.

Trial of issues.

SEC. 40. If any issue of fact be joined on such suggestion, it shall be tried as in other causes, and if such issue be found for the plaintiff, the same jury shall assess his damages, to the amount of the mesne profits received by the defendant, since he entered into possession of the premises subject to the restrictions hereinafter contained.

Facts to be
established by
plaintiff.

SEC. 41. On the trial of such issue, the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into the possession of the premises; the time during which he enjoyed the mesne profits thereof; and the value of such profits; and the record of the recovery in the action of ejectment shall not be evidence of such time.

Extent of
recovery
of rents, etc.

SEC. 42. The plaintiff shall not be entitled to recover the rents and profits of the land so recovered, for any longer term than six years immediately preceding the time when such suggestion shall be served on the defendant.

Set off by
defendant.

SEC. 43. On such trial, the defendant shall have the same right to set off permanent improvements made on the premises, to the amount of the plaintiff's claim, as is now allowed by law; and in estimating the plaintiff's damages, the value of the use by the defendant, of any improvements made by him, or purchased by him in good faith from any person from whom he derives color of title thereto, shall not be allowed to the plaintiff.

Value of im-
provements.

SEC. 44. Whenever in any action of ejectment the plaintiff, or any one or more of the plaintiffs, if there be more than one, shall recover, or recover any undivided interest in the premises the defendant or defendants shall be allowed compensation in proportion to such recovery for buildings and improvements on the premises recovered, erected, or made by him or them, by any person through whom he or they claim title to the extent that such buildings and improvements shall increase the present value of said premises: *Provided*, The defendant or defendants, or the person through whom he or they claim title, shall have been in the actual,

Proviso,
possession
for six years.

peaceable occupation of the premises recovered, for six years before the commencement of the action: Or *Provided*, The same shall have been so occupied for a less time than six years under a color of title and in good faith.

Proviso,
color of title,
etc.

SEC. 45. In all actions of ejectment, if any defendant wish to avail himself of the provisions for compensation contained in the last preceding section, he may file a claim in writing, to compensation for buildings and improvements on the premises in controversy, setting forth therein the character of the occupation, and the time thereof, and a request that the jury find whether the premises have been actually and peaceably occupied by the defendant, or the person through whom he claims title, and the time of such occupation, and determine the increased value of the premises by reason thereof, a copy of which, with notice of the filing thereof, shall be served on the plaintiff or his attorney at least ten days before the first day of the term at which such cause is tried. The plaintiff may then file a request in writing, that the jury also find and determine what would have been the value of the premises at the time of the trial, if no buildings had been erected or improvements made or waste committed, a true copy of which, with notice of filing, shall be served on the defendant or his attorney, within five days after service of said notice of claim for compensation for improvements. The jury, in all cases in which the above matters shall be submitted to them, shall, by their verdict, if they find for the plaintiff, also find and determine upon said matters.

Claim in
writing to
compensation,
etc.

Value of
premises
without im-
provements,
etc.

SEC. 46. If, after the rendition of the verdict, the plaintiff shall at the same or next subsequent term of the court make his election on record to abandon the premises to the defendant at the value estimated by the jury, or in cases where an undivided interest is recovered at a proportionate part of such value, then judgment shall be rendered against the defendant for the sum so estimated by the jury, with costs of suit; where the recovery is of an entire interest, and where recovery is had of an undivided interest, then judgment shall be rendered against the defendant for a proportionate part of the sum so estimated by the jury, with costs of suit, which judgment shall be a lien upon the premises in question, and execution may issue on such judgment and be levied upon such premises, and the same may be sold by virtue thereof, in the same manner, and with the like effect, as any other real estate of the defendant.

Abandonment
of premises
and judgment
for value.

Lien on
premises.

SEC. 47. If the plaintiff shall not elect to abandon the premises to the defendant, he shall within one year after the rendition of the judgment for the recovery of the premises, in cases of recovery of an entire interest, pay to the clerk of the court, for the use of the defendant, such sum as shall have been assessed for the buildings and improvements, with interest thereon; and in cases where a recovery of an undivided interest is had, the said plaintiff shall pay to the said clerk, for the use of the defendant, within the time aforesaid,

Payment for
value of im-
provements,
etc.

Effect of default. Proviso, taxed costs set off.	a proportionate part of such sum as shall have been assessed for the buildings and improvements, with interest thereon; and no writ of possession shall issue on the judgment rendered on the verdict, nor any new action be sustained for the land or undivided interest in the same, as the case may be, until such sum is paid; in case of a recovery of an entire interest, and until a proportionate part of such sum is paid in case of a recovery of an undivided interest, and a default to pay to said clerk as aforesaid, shall be deemed an abandonment of all claim of title to the premises, and a bar to the recovery thereof: <i>Provided</i> , That the plaintiff's taxed costs shall be set off by the clerk against the amount of the verdict recovered by the defendant for buildings and improvements, and where the amount of such taxed costs equals or exceeds the amount of the verdict for buildings and improvements, it shall not be necessary for the plaintiff to make any payment in satisfaction of the defendant's verdict for buildings and improvements.
Assessment of damages, etc., on default.	SEC. 48. If no issue of fact be joined on such suggestion, and judgment be rendered thereon against the defendant by default, or otherwise, the value of such mesne profits shall be assessed, and the plaintiff's damages ascertained in the same manner as in other cases.
Proceedings on assessment of damages.	SEC. 49. Upon such assessment, the plaintiff shall be required to establish the same matters hereinbefore required, in the case of an issue being joined, and the defendant may, in like manner, controvert the same, and make any set-off to which he shall be entitled, and the jury shall assess the damages in the same manner.
Judgment.	SEC. 50. Upon the return of an inquisition of damages, or upon the verdict of the jury in case of an issue being joined, the court shall render judgment as in actions of assumpsit, for use and occupation, which shall have the like effect in all respects.
Recovery of mesne profits on death of plaintiff.	SEC. 51. If the plaintiff in ejectment shall have died after issue joined, or judgment therein, his personal representatives may enter a suggestion of such death, and of the granting of letters testamentary or of administration to them, and may suggest their claim to the mesne profits of the premises recovered, in the same manner and with the like effect as the deceased might have done if still living; and the same proceedings in all respects shall be had thereon.
Recovery of dower not previously admeasured.	SEC. 52. If an action be brought to recover the dower of any widow which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in the manner following:
Admeasurement.	1. Upon the filing of the record of judgment the court, on the motion of the plaintiff, shall appoint three discreet and disinterested freeholders commissioners, for the purpose of making admeasurement of the dower of the plaintiff, out of the lands described in the record; and the commissioners

so appointed shall proceed in like manner, possess the like powers, and be subject to the like obligations as commissioners appointed by the judge of probate to set off dower;

2. The commissioners shall make a report of their doings to the court, in writing, as soon as may be after their appointment, which report shall be confirmed by such court, unless good cause to the contrary be shown; and shall be entered at large in the minutes of such court;

3. Upon the confirmation of the report of the commissioners, a writ of possession shall be issued to the sheriff of the proper county, describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

SEC. 53. The costs and expenses incurred in such admeasurement, shall be subject to the same provisions as in cases of admeasurement of dower by commissioners appointed by the judge of probate. Costs and expenses of admeasurement.

SEC. 54. No action of ejectment shall hereafter be maintained by a mortgagee, or his assigns or representatives, for the recovery of the mortgaged premises, until the title thereto shall have become absolute upon a foreclosure of the mortgage. Ejectment by mortgagee, etc.

SEC. 55. When such action of ejectment shall be removed to the supreme court by a writ of error, or otherwise, whether the judgment of the circuit court be affirmed or reversed, if a writ of restitution or possession become necessary or proper to carry into effect the judgment of the supreme court, the case shall be remanded to the circuit court where the same originated, with the order of the supreme court in the premises, and such writ of possession or restitution shall issue from such circuit court. Writ of restitution, when issued.

SEC. 56. It shall be lawful for any tenant or tenants in common, who may recover any undivided interest in lands, in an action of ejectment against a person or persons who may be in possession thereof, but who does not show in the trial of such action that he or they have any interest therein or title thereto, to take possession of the entire premises subject to all of the rights and interests of the other tenant or tenants in common therein. When tenant may take possession.

SEC. 57. The court before whom such action of ejectment shall be tried and such recovery had, shall order that execution be issued in favor of the plaintiff or plaintiffs in such action to put such plaintiff or plaintiffs in possession of the entire premises subject to the right or rights of the other tenant or tenants in common in said premises. Issue of execution.

SEC. 58. Notwithstanding the expiration of the term of private corporations organized for the conduct of business of any kind, under the laws of this State, any one having such an interest as would entitle him to bring ejectment therefor, in any land owned by such corporation while in existence, and not aliened or divested from it by due process of law, may bring an action of ejectment for the recovery Action after expiration of term of corporation.

Proceedings. of the same. The summons or declaration shall be against such corporation by its corporate name, and against any occupant or occupants of such lands, as defendants. Such summons or declaration shall be served on either of the persons who may have been last presiding officer, president, cashier, secretary or treasurer thereof; and in case personal service cannot be had upon any such officer for any reason, then the like proceedings by publication shall be had against such corporation as in other cases. The affidavit upon which the order of publication shall be based, shall set forth the name of such corporation while in existence, the purpose of its organization, the statute of the state under which it was organized, and that its term of existence and the time in addition thereto during which it might by law be permitted to sue, or be sued, has expired. If there be no appearance of any person or persons entitled to appear therein, as hereinafter mentioned, within the time provided in such summons, notice endorsed upon the declaration or order of publication, the default of such defendant for want of appearance or plea, may be taken as in other cases. Within the time fixed in such summons, notice endorsed on the declaration or such order of publication, any person or persons who were stockholders of such corporation while it subsisted and who still retain their rights in the property in question, by virtue of having owned stock therein, and any creditor or creditors of such corporation, whose claims are subsisting and not barred by limitation of time, may appear and defend such action as fully as such corporation could have done while subsisting:

Who may defend. *Provided,* That such right to appear and defend may be drawn in question by the plaintiff on the trial of the cause. All persons so appearing shall plead together and in the name of the corporation. Such publication shall be a full and complete service upon such corporation, and upon all persons natural or artificial, interested in said land, because of their having been stockholders in the corporation while subsisting, or creditors thereof. All persons so appearing and defending, or seeking to defend, shall be liable for costs in the action as fully as such corporation would be if defending.

Proviso, questioning right to defend.

Liability for costs.

Verdict and judgment. **SEC. 59.** The verdict and judgment in such suit shall be against the corporation in the corporate name and shall be binding upon it and upon all persons claiming said land by virtue of their stock in or demands upon the same, and shall be conclusive against such corporation and such persons, subject only to such exceptions as are or may be provided by general statute in other cases of ejectment. Any judgment in favor of the defendant corporation shall inure to the benefit of the persons entitled to the property in dispute. The plaintiff shall have judgment against such corporation defendant neither for money damages of any kind nor for costs of suit subject to the discretion of the court, nor shall he be entitled to file against it a suggestion of damages in continuation of such judgment.

SEC. 60. Hereafter upon the commencement of any action of ejectment, the plaintiff shall file for record in the office of the register of deeds of the county wherein the lands sought to be recovered are situated, a notice of the pending of such suit in ejectment, setting forth its title and the general effect thereof and a description of the lands to be affected thereby and the party in whose favor any final judgment in ejectment shall be rendered shall, within thirty days after the rendition thereof, file for record in said register's office a duly certified copy of said final judgment, and in case of failure so to do, the commencement of said suit or the rendition of said judgment shall not be operative as constructive notice to purchasers of said real estate of the right or title of said plaintiff or of any right or title established by said final judgment, until such notice of suit, or certified copy of judgment shall be so filed for record.

Notice of commencement of action, etc., to be filed with register of deeds.

Failure to file.

SEC. 61. It shall be the duty of the register to receive, file and record such notice and certified copies of judgments in a book kept for that purpose, upon paying to him the fees allowed by law for recording deeds of conveyance.

Duty of register.

CHAPTER XXX.

Proceedings to Recover the Possession of Land in Certain Cases.

Of Forcible Entries and Detainers.

SECTION 1. No person shall make any entry into lands, tenements or other possessions, but in cases where entry is given by law; and, in such cases, he shall not enter with force, but only in a peaceable manner.

Entry into possession.

SEC. 2. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

Restoration of possession.

SEC. 3. The person entitled to the possession of the premises, his agent or attorney, may make complaint in writing and on oath, and deliver the same to a circuit court commissioner of the county in which the premises are situated, or to a justice of the peace of the city or township where the premises are located, setting forth that the person complained of, is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, or against the rights of the plaintiff, as the case may be: *Provided*, That justices of the peace shall not have jurisdiction under this chapter, when a circuit court commissioner resides in the same township or city, unless such circuit court commissioner shall be absent from the county, or is interested in the case, either as principal, agent or attorney.

Complaint.

Proviso, justice's jurisdiction.

Process upon
complaint.

SEC. 4. Upon receiving such complaint, the officer to whom the same is delivered, shall issue his warrant, directed to the sheriff or any constable of the same county, commanding him to apprehend the person named in such complaint, and to bring him forthwith before such officer, to answer such complaint; or such officer may, at the option of the plaintiff, issue summons against the defendant, as hereinafter provided, in cases of tenants holding over after the expiration of their term, and the same proceedings may be thereupon had as in case of a tenant holding over after the expiration of his lease.

Summons.

Execution
of warrant.

SEC. 5. The sheriff or constable to whom any such warrant shall be delivered, shall execute the same by arresting the defendant, and bringing him forthwith before the officer issuing such warrant, and shall thereupon notify the plaintiff of such arrest.

Pleading to
complaint.

SEC. 6. Upon the defendant being brought before such officer on such warrant, he may plead not guilty to the complaint, or if he neglect or refuse to plead thereto, such officer shall enter such plea for him.

Powers of
officer issuing
warrant.

SEC. 7. On such issue being joined, the officer issuing the warrant shall possess all the power necessary for the trial and determination thereof, and shall proceed to hear and determine the same; and for that purpose may issue subpoenas for witnesses, and compel their attendance in like manner as justices of the peace are authorized to do in cases within their jurisdiction.

Trial by jury.

SEC. 8. If, before proceeding to the trial of such issue, either the plaintiff or the defendant shall request that the same be tried by a jury, such jury shall be selected and summoned, and the same proceedings shall be had in all respects as upon the trial of a cause by a jury in a justice's court, except that the sheriff, if present, may perform the same duties in the selecting, summoning, and keeping of the jury in such case, as constables are authorized to perform in cases in justices' courts, and the venire shall be directed to the sheriff or any constable of the county.

Judgment on
conviction.

SEC. 9. If such defendant shall be convicted upon a trial before such officer, or by the verdict of such jury, or upon a plea of guilty to such complaint, the officer who issued the warrant shall thereupon enter a judgment that the plaintiff have restitution of the premises; and shall tax the costs and expenses for the plaintiff.

Precept and
execution.

SEC. 10. The court shall thereupon issue a precept, commanding the sheriff or any constable of the county, to cause the plaintiff to be restored and put into full possession of the said premises; and shall also, in the same precept, or in a separate execution, direct the costs and expenses so taxed to be levied and collected of the defendant, in the same manner as costs are or may be collected on judgments before justices of the peace, in personal actions.

Judgment for
defendant.

SEC. 11. If the plaintiff shall fail to prosecute his complaint, or if on such trial the defendant shall be found not

guilty, judgment shall be rendered for the defendant for his costs, which shall be taxed and collected of the plaintiff, in the same manner hereinbefore provided for the collection of costs in favor of a plaintiff recovering judgment.

Summary Proceedings to Recover the Possession of Land in Other Cases.

SEC. 12. The person entitled to any premises may recover possession thereof in the manner hereinafter provided, in the following cases: How premises recovered.

1. When any person shall hold over any lands or tenements, after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any executory contract for the purchase of lands or tenements, or any lease or agreement under which he holds, or where rent shall have become due on any such lease or agreement, and demand of the rent or possession of the premises is waived therein, in writing, and not included in the printed form of the lease or agreement;

2. When any rent shall have become due, on any such lease or agreement, and the tenant or person in possession shall have neglected or refused for seven days after demand of the possession of the premises, unless waived as aforesaid, made in writing, to deliver up possession of the premises or pay the rent so due;

3. When any person shall continue in possession of any premises sold by virtue of any mortgage or execution, after the expiration of the time limited by law for the redemption of such premises, or when any heir or devisee shall continue in possession of any premises sold and conveyed by any executor or administrator under license from the probate court or under authority in the will, to pay the debts of the deceased testator or intestate;

4. When any tenant at will or by sufferance shall hold over, after the determination of his estate, by a notice to quit, as provided by law.

SEC. 13. In the cases specified in the preceding section, the person or persons entitled to the possession of the premises, his or their agent or attorney, may make complaint in writing and on oath, and deliver the same to a circuit court commissioner, or to a justice of the peace, when he shall have jurisdiction under this chapter, setting forth that the person complained of, is in possession of the lands or tenements in question, describing them, and that such person holds the same unlawfully, and against the rights of the plaintiff. Complaint.

SEC. 14. Upon receiving such complaint, the officer to whom the same is delivered shall issue a summons directed to the sheriff, or any constable of the same county, commanding him to summon the defendant to be and appear before such officer, at a time and place therein to be specified, Summons.

not less than three nor more than six days from the issuing thereof, to answer such complaint.

Service.

SEC. 15. The officer to whom such summons shall be delivered shall serve the same at least two days before the time of appearance mentioned therein, by delivering to the defendant, if to be found within the county, a copy thereof, but if the defendant shall not be found it shall be served by leaving such copy at the usual place of abode of such defendant, in the presence of some person of suitable age who shall be informed of its contents.

Defendant's plea.

SEC. 16. Upon the return of such summons, if the same be returned duly served, and the defendant appears, such defendant may plead not guilty to the complaint, or if he neglect or refuse to plead thereto, such officer shall enter such plea for him, and such issue shall be tried and judgment shall be rendered, and the same proceedings shall be had thereon in all respects, and the costs shall be taxed and collected in the same manner as in cases of forcible entry or detainer, and with the like effect: *Provided*, That if it is claimed either upon the trial before such officer, or upon the trial of any appeal to the circuit court, that the plaintiff is entitled to the possession of said premises, in consequence of the nonpayment of any sum of money due, either as rent or as a part or portion of the purchase money of premises, under a contract in writing for the purchase thereof, such officer, or the court, or the jury, if the case is tried by a jury, shall, in addition, ascertain and determine the amount due the said plaintiff, and such amount shall be stated in said judgment.

Proviso, amount due.

Adjournment.

SEC. 17. If the defendant fail to appear on the return of such summons, and the same be returned duly served, the officer issuing such summons may, in his discretion, adjourn the hearing, not more than six days from the return of such summons, and on the day to which the hearing shall be adjourned, if the defendant appear, the same proceedings shall be had as if he had appeared at the return of the summons.

Hearing.

SEC. 18. If the defendant fail to appear on the return of the summons, and there be no adjournment, or if the defendant fail to appear on the day to which the hearing may be adjourned, the officer shall note such failure in the minutes of his proceedings, and proceed to hear the complaint, and to inquire into the truth thereof; and if such officer shall be satisfied that such complaint is true, and that the plaintiff is entitled to restitution of the premises, he shall render judgment accordingly, and tax the costs for the plaintiff, and issue a writ of restitution, and process for the collection of the costs, as in other cases, and with the like effect.

Judgment.

General Provisions.

Adjournments.

SEC. 19. After an issue shall be joined upon any complaint in pursuance of the provisions of this chapter, the hearing may be adjourned from time to time, as may be neces-

sary, upon sufficient cause being shown, not exceeding thirty days in all.

SEC. 20. If such hearing be adjourned on the application of a defendant, proceeded against by warrant for a forcible entry, or forcible detainer, and the plaintiff shall not consent thereto, such defendant shall continue, during the time of the adjournment, in the custody of the sheriff or constable, unless he shall give bond to the plaintiff, in the penal sum of fifty dollars, with sufficient surety to be approved by the officer issuing the warrant, conditioned to pay all such costs as shall be awarded against him in such cause.

When defendant to remain in custody.

Bond for release.

SEC. 21. The officer before whom any proceedings shall be had for recovering the possession of lands in pursuance of this chapter, shall possess all the necessary powers for issuing subpoenas, and compelling the attendance of witnesses, and enforcing obedience to all orders and process lawfully made or issued by him.

General powers of officer.

SEC. 22. Every person summoned as a juror or subpoenaed as a witness, who shall not appear, or appearing shall refuse to serve or testify in any cause prosecuted by virtue of this chapter, shall forfeit and pay for every such refusal, unless some reasonable excuse be shown, such fine, not exceeding ten dollars, as the officer before whom the proceedings are instituted shall think proper to impose; and such officer is authorized and required to issue an execution for the collection thereof, directed to the sheriff or any constable of the county, in the same manner and with the like effect, as justices of the peace are authorized to do in cases of similar fines imposed by them.

Penalty for non-appearance of juror or witness.

SEC. 23. The plaintiff obtaining restitution of any premises under the provisions of this chapter, shall be entitled to an action of trespass on the case against the defendant, and may recover double damages from the time of the forcible entry, or forcible detainer, or of the notice to quit, or demand of possession, as the case may be.

Recovery of double damages by plaintiff.

SEC. 24. Either party conceiving himself aggrieved by the determination or judgment of the commissioner, or other officer, made or rendered under the provisions of this chapter, may appeal therefrom to the circuit court for the same county, within the same time, in the same manner, and return may be compelled, and the same proceedings shall be thereon had, as near as may be, and with the like effect, as in cases of appeals from judgments rendered before justices of the peace, and costs shall be awarded and collected in the circuit court in the same manner; and if such appeal is taken by the defendant the appeal bond shall be in a penalty to be fixed by the officer taking the same, not less than double the amount of the annual rental value of the premises in dispute, to be determined by the commissioner, and shall be executed by two or more sufficient sureties, and shall also in addition to the usual conditions of an appeal bond contain a further condition, that if the plaintiff obtain restitution of

Appeal to circuit court.

Appeal bond of defendant.

said premiums in said suit, the said defendant will forthwith pay all rent due or to become due the plaintiff for the premises described in the complaint, or the rental value thereof, up to the time said plaintiff shall obtain possession thereof, together with costs of suit in prosecuting said complaint and obtaining restitution of said premises, and if the plaintiff obtain restitution of said premises he may, at his election, sue and recover on said bond, or bring his action against the defendant, under section twenty-three of this chapter.

When writ of
restitution
to issue.

SEC. 25. No writ of restitution shall be issued under the provisions of this chapter, until the expiration of five days after the entry of judgment of restitution; and in case of an appeal within that time, no writ of restitution shall issue until such appeal be determined in the circuit court; and in case it is found that the plaintiff is entitled to the possession of the premises, in consequence of the nonpayment of a sum of money, no writ of restitution shall issue, if the defendant shall, within five days after final judgment, pay the amount so found due, and the amount of costs awarded to the said plaintiff.

Execution
for costs.

SEC. 26. If upon the trial of an appeal in the circuit court, judgment be rendered in favor of either party for costs, the circuit court may issue execution for such costs, and if the plaintiff shall recover judgment of restitution of the premises in question, or any part thereof, the circuit court may issue a writ of possession in favor of the plaintiff, in accordance with such judgment of restitution, which writ of possession may be issued to the sheriff or other proper officer of any county of this State in which the premises recovered are situated, in all such cases where such judgment shall have been or may hereafter be rendered.

Writ of
possession.

Certiorari.

SEC. 27. In all cases of judgment rendered in any cause under the provisions of this chapter, either party may remove such judgment by writ of certiorari, into the circuit court for the county in which the judgment was rendered, within the same time and in the same manner, and a return may be compelled, and the same proceedings shall be thereupon had, as near as may be, as in cases of a certiorari to a justice of the peace.

Bond to be
given before
certiorari
is allowed.

SEC. 28. After the rendition of judgment against the defendant in any suit under the provisions of this chapter, no certiorari shall be allowed, unless he shall make and execute to the plaintiff a bond, the penalty to be fixed by the officer allowing the certiorari, not less than double the amount of the annual rental value of the premises in dispute, to be determined by the commissioner, with good and sufficient sureties, who shall justify, and also be approved by said officer, conditioned that if the plaintiff obtain restitution of said premises in said suit, the said defendant will forthwith pay all the rent due, or to become due the plaintiff, or the rental value thereof up to the time said plaintiff shall obtain possession thereof, together with costs of suit in prosecut-

ing said complaint, and obtaining restitution of said premises, which bond shall be delivered to said plaintiff, or his agent or attorney; and if the plaintiff obtain restitution of said premises, he may, at his election, sue and recover on said bond, or bring his action against the defendant, under section twenty-three of this chapter.

SEC. 29. On the trial of any cause under the provisions of this chapter, it shall be competent for the jury or officer before whom such trial may be had, to find the defendant guilty of forcibly or unlawfully holding over or detaining the premises described in the complaint, or any part thereof, and judgment may thereupon be rendered in accordance with such finding.

Recovery
of part of
premises
described.

CHAPTER XXXI.

Of the Partition of Lands Owned by Several Persons.

SECTION 1. All persons holding lands as joint tenants or tenants in common, may have partition thereof, in the manner provided in this chapter.

Who may
have partition.

SEC. 2. Any one or more of the persons so holding lands, may institute a suit in the circuit court for the county in which the lands lie, by a bill in equity, for a division, or partition thereof, according to the respective rights of the parties interested therein, and for the sale of such premises, if it shall appear that the partition thereof cannot be made without great prejudice to the owners. In case such lands are situated in different counties, the suit may be instituted in the circuit court for any one of the counties in which any part of such lands may be situated, and such court shall have complete jurisdiction in the premises as fully and effectually as if the whole of such lands were situated in the county in which the suit is instituted.

Suits, how
instituted.

Land in
different
counties.

SEC. 3. Such suit may be maintained by any person who has an estate in possession of the lands of which partition is sought, but not by one who has only an estate therein in remainder or reversion; such suit may also be maintained by any person who has an estate in possession in any ores, minerals or metals, that may exist or be hereafter discovered in such lands, and such last mentioned suit shall be brought only against such persons as may have an estate in possession in such ores, minerals or metals, and any person who owns an undivided interest, however acquired, in all of the estates in possession and in expectancy, in the land of which partition is sought, shall be deemed to have an estate therein in fee simple, absolute in possession, to the extent of the least share which he has in any of the estates, and shall be entitled to maintain a bill for partition under the provisions of this chapter.

By whom suit
maintained.

Ores,
minerals
or metals.

Undivided
interests.

SEC. 4. The bill for a partition or sale of any such lands shall be verified by oath, and shall particularly describe the

Bill to be
verified.

What to
set forth.

premises sought to be divided, and shall set forth the rights and titles of all persons interested therein, so far as the same are known to the complainant, including the interest of any tenant for years, for life or in dower, and the persons entitled to the reversion, remainder or inheritance after the termination of any particular estate therein, and every person who, by any contingency contained in any devise, grant or otherwise, may be, or become entitled to any beneficial interest in the premises.

Who may be
made parties.

SEC. 5. Every person having any such interest as aforesaid, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, may be made a party to such suit.

Unknown
parties or
uncertain
interests.

SEC. 6. In case any one or more of such parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be a contingent remainder, so that such parties cannot be named, the same shall be set forth in the bill.

Creditors
having lien
need not be
made parties.

SEC. 7. It shall not be necessary in the first instance, to make any creditor having a lien on the premises in question, or any part thereof, by judgment, decree, mortgage, or otherwise, a party to the proceedings, nor shall the partition of the premises alter, affect or impair the lien of any such creditor, except in the cases provided for in the next section.

Transfer
of lien.

SEC. 8. When the lien is on the undivided interest or estate of any of the parties, either in a portion or the whole of the premises partitioned, such lien, if partition be made, shall thereafter be transferred, and be a charge only on the premises assigned to such party, and may be enforced against the same as though such lien had originally existed thereupon; but if the person having such lien be made a party to such suit, the court may direct the commissioners appointed to make such partition, to designate and set apart a tract or portion of the premises equal in value to the estate or interest of the party to whose portion the lien is to be transferred, in the tract upon which such lien had before existed; and on the confirmation of the report of such commissioners, such lien shall thereupon be transferred to the portion of the premises so designated by the commissioners, with the same effect as is above provided in case the person having such lien is not a party to such suit; the portion of the premises to which the lien is transferred shall be first charged with the just proportion of the costs of the proceedings in preference to said lien; if at any time prior to the confirmation of the report of the commissioners appointed to make such partition, any person had an uncertain or contingent interest in any part of the premises, which has since the filing of the bill become a certain or absolute interest, or who has acquired a title in fee to any part of said premises by virtue of any mortgage or execution sale of any interest thereon,

When lien
holder is
made party.

Premises
charged with
proportion
of costs.

shall apply to the court by petition setting forth his interest in the premises, the court shall thereupon direct that such person be made a party to such proceedings, and shall make such other or further orders and decrees respecting the rights of such person as shall be agreeable to equity.

Other parties brought in upon petition.

SEC. 9. But the plaintiffs may, at their election, make every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage or otherwise, a party to the proceedings; and in such case the bill shall set forth the nature of every such lien or incumbrance.

Creditors with specific liens may be made parties.

SEC. 10. Upon filing a bill in the circuit court for the partition or sale of any lands pursuant to the provisions of this chapter, the defendants, or such of them as reside in this State, and can be found therein, shall be served with a summons to appear and answer the bill, and the same may be taken as confessed, according to the practice in courts of equity.

Summons to appear and answer.

SEC. 11. If any parties having an interest in such lands are unknown, or if either of the known parties reside out of this State, or cannot be found therein, the same proceedings shall be had as in other chancery cases under like circumstances: *Provided, however,* That the order of publication shall contain a sufficient description of the premises whereof partition is sought, in addition to the other matters required by law to appear in such order.

Unknown or non-resident parties, procedure.

Proviso, order of publication.

SEC. 12. The proof of personal service or of the publication of such order, shall authorize an order of the court for taking the bill as confessed against all such unknown parties, and persons not resident in this State, or not found therein, as shall not appear and answer by the day mentioned in the order, or on such further day as the court may appoint; and all such unknown parties as may appear, shall be entitled to be made parties to the suit, and the bill may be amended accordingly.

Taking bill as confessed.

SEC. 13. The general guardians residing in this State, of all minors and other persons under guardianship, who should be parties to such proceedings for partition, upon giving bond as hereinafter directed, shall represent their respective wards therein, whether such wards shall reside in or out of this State, and the court shall appoint guardians for all such minors who shall be interested in the premises, as have no general guardians in this State, for the special purpose of taking charge of the interests of such minors, in relation to the proceedings; and the acts of all such guardians of minors, or others under guardianship, shall be binding on their respective wards, and shall be as valid as if done by them respectively when of full age, or under no legal incapacity.

Guardians for minors, etc.

Guardians ad litem.

Effect of acts of guardians.

SEC. 14. Every such guardian shall give bond to the people of this State to be filed with the clerk of the court, in such penalty, and with such surety as the court shall direct; conditioned for the faithful performance of the trust reposed

Bond of guardian.

in such guardian, and to render a just and true account of his guardianship in all courts and places when thereunto required, and for the observance of the orders of the courts in relation to the said trust.

On failure of guardian to give bond, clerk to be appointed.

SEC. 15. When a bill shall be filed for the partition or sale of any lands in pursuance of this chapter, and any of the defendants therein are minors, or other persons under guardianship, and the general guardian or person appointed guardian by the court, shall fail to give the security hereinbefore required, it shall be the duty of the court, on the application of the plaintiffs, to appoint the clerk of said court the guardian of such minors or other persons, for the purpose of such partition, and to dispense with the securities hereinbefore required.

Denial of joint tenancy, etc.

SEC. 16. Any defendant may deny the joint tenancy, or tenancy in common of any co-defendant, and such issue shall be tried and disposed of as in other cases.

Hearing of cause.

SEC. 17. Upon the hearing of the cause, the court shall declare the rights, titles and interests of the parties to such proceedings, so far as the same shall have appeared, and shall determine the rights of the said parties in such lands, and shall decree that partition be made between such of them as shall have any rights therein, according to such rights.

Decree in case of parties not appearing.

SEC. 18. If upon the hearing of the cause, the part or interest of any parties who shall not have appeared and answered the bill, whether known or unknown, in and to such premises, shall not have appeared by the proofs in the cause, then the court shall decree that partition be made, so far as the rights or interests of the parties who are known, and who have appeared in the cause, have been ascertained, and the residue of the premises shall remain for the parties whose interests have not been ascertained, subject to division between them at any future time.

Inquiry into situation of premises.

SEC. 19. Upon making a decree for partition as provided in the two last preceding sections, an order may be entered referring it to a circuit court commissioner to inquire into the situation of the premises, and to report whether such premises, or any part of them, are so circumstanced that a partition and division thereof amongst the parties interested cannot be made without great prejudice to the owners, or the court may in its discretion hear proofs thereon.

Commissioners to make partition.

SEC. 20. If the court shall be satisfied that partition of the premises between the parties interested therein can be made without prejudice to the owners, such court shall, by an order to be entered in its minutes, appoint three discreet and disinterested freeholders commissioners, to make the partition so decreed, according to the respective rights and interests of the parties, as the same were ascertained and determined by such court, and in such order the court shall designate the part or shares, if any, which shall remain undivided, for the owners whose interests shall be unknown or not ascertained.

SEC. 21. If the persons so appointed commissioners, or either of them, shall die, resign, or neglect to serve, the court may, from time to time, appoint others in their places. Vacancies.

SEC. 22. The commissioners, before proceeding to the execution of their duties, shall severally be sworn before any officer authorized to administer oaths, honestly and impartially to execute the trust reposed in them, and to make partition as directed by the court; which oath shall be filed with the clerk of the court on or before the coming in of the report of such commissioners. Oath of commissioners.

SEC. 23. In making partition, the commissioners shall divide the said real estate, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively considered, according to the respective rights and interests of the parties so adjudged and decreed by the court, designating the several shares and portions by posts, stones, or other permanent monuments, and they may, if necessary, employ a surveyor with the necessary assistants, to aid them therein. Partition, how made.

SEC. 24. The commissioners shall make an ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust, and describing the land divided, and the shares allotted to each party, with convenient certainty, and the items of their charges. Report of commissioners.

SEC. 25. All the commissioners must meet together in the performance of any of their duties, but the acts of a majority so meeting shall be valid. All to meet, etc.

SEC. 26. The expenses of the commissioners, including the expenses of a surveyor and his assistants, when they shall be employed, shall be ascertained and allowed by the court; and the amount thereof, together with such compensation as shall be allowed to the commissioners by the court for their services, shall be paid by the plaintiffs and shall be allowed to them as part of the costs to be taxed. Expenses.

SEC. 27. On good cause shown, the court may set aside the report, and commit the case to the same, or appoint new commissioners, as often as may be necessary, who shall proceed in like manner as hereinbefore directed. Setting aside report, etc.

SEC. 28. Upon the confirmation of the report of any commissioners by the court, a decree shall thereupon be entered, which shall be binding and conclusive: Decree on confirmation of report.

1. On all parties named therein, and their legal representatives, who shall, at the time, have any interest in the premises divided, as owners in fee, or as tenants for years, or as entitled to the reversion, remainder or inheritance of such premises, after the termination of any particular estate therein; or who, by any contingency contained in any will or grant, or otherwise, may be or become entitled to any beneficial interest in the premises; or who shall have any interest in any undivided share of the premises, as tenant for years, for life, or in dower;

2. On all persons interested in the premises, who were unknown at the time of the commencement of the suit, to whom notice shall thereafter have been given by personal service, or by publishing the same as hereinbefore directed; and

3. On all other persons claiming from such parties or persons, or either of them.

Persons and cases not affected.

SEC. 29. But such decree and partition shall not affect any tenants, or persons having claims as tenants, in dower, or for life, to the whole of the premises which shall be the subject of such partition; nor shall any such decree and partition preclude any person, except such as are specified in the last preceding section, from claiming any title to the premises in question, or from controverting the title or interest of the parties, between whom such partition shall be made.

Sale of premises, in case division cannot be made.

SEC. 30. If the court shall find that all the lands or tenements of which division and partition is sought, is so situated, or that any district, tract, lot or portion thereof is so situated that a partition and division thereof amongst the persons interested therein cannot be made without great prejudice to the owners, the court may thereupon make an order that the circuit court commissioner sell the premises so situated at public auction, to the highest bidder; and if the court shall find that any portion, interest or part can be divided, and partition made thereof, and that other portions, interests or parts cannot be so divided without great prejudice to the owners thereof, the court may, by an order, appoint commissioners as hereinbefore provided, and direct said commissioners to proceed to make partition and division of such parts or interests of which division can be made, and to set apart such portion, interest or parts as cannot be divided to be sold, and the same may be sold as hereinafter provided.

Division of part of premises.

Terms of credit of purchase money, etc.

SEC. 31. The court shall direct, in such order, the terms of credit which may be allowed, for any portions of the purchase money of which it shall think proper to direct the investment, and for such portions of such purchase money as are required by the provisions hereinafter contained, to be invested for the benefit of any unknown owners, any infants, any parties out of the State, or any tenants for life or in dower.

Credits, how secured.

SEC. 32. The portions of the purchase money for which credit shall be allowed, shall always be secured at interest, by a mortgage of the premises sold, by a bond of the purchaser, and by such other security as the court shall prescribe.

Separate securities.

SEC. 33. The circuit court commissioner may take separate mortgages and other securities, for such convenient shares or portions of the purchase money, as are directed by the court to be invested, in the name of the clerk of the court in whose office the original bill for a partition was filed, and his successors in office; and for such shares as any known owner of

full age shall desire to have so invested, in the name of such owner.

SEC. 34. Upon such sales being confirmed, as hereinafter mentioned, the said circuit court commissioner shall deliver such mortgages and other securities to the clerk of the court, or to the known owners whose shares were so invested.

To whom securities delivered.

SEC. 35. Before making any order for the sale of the said premises where creditors or other persons, having specific liens, or purchasers at mortgage, or execution sales of interests, in any part of the premises, shall not have been made parties, the court shall direct the plaintiff to amend his bill by making parties to the proceedings every person having a specific lien on the undivided interest or estate of any of the parties by mortgage or otherwise, and also persons who have acquired an interest under mortgage or execution sales.

Plaintiff to amend bill before order of sale.

SEC. 36. If it shall appear by the proceedings on such bill, or by such report, that there are any existing incumbrances upon the estate or interest in the premises, of any party named in the proceedings in the suit, the court shall, in the order of sale, direct the circuit court commissioner to bring into court and pay to the clerk the portion of the moneys arising from the sale of the estate and interest of such party, after deducting the portion of the costs, charges and expenses to which it shall be liable.

Certain moneys to be brought into court.

SEC. 37. Such party may apply to the court to order such moneys, or such part thereof as he shall claim, to be paid to him; which application shall be accompanied:

Application for moneys brought in.

1. By his own affidavit, stating the true amount actually due on each incumbrance, the owner of each incumbrance, and his residence, as far as known to such party;

2. By proof by affidavit, of the due service of a notice on each owner of any incumbrance, of the intention to make such application, at least fourteen days previously. If such owner reside in this State, such notice shall be served personally, or if he be absent from his residence, by leaving a copy there, with some person of his household of proper age. If such owner reside out of this State, such notice may be served on him personally, thirty days previously, or by publishing the same in such paper as the court may direct, three weeks successively, once in each week.

SEC. 38. Upon such application and proof of notice, the court shall proceed to hear the proofs and allegations of the parties as in other cases, and determine the rights of such parties in accordance with the facts, and the costs of such trial shall be paid by such party as the court shall direct.

Hearing and determination.

SEC. 39. When the amount of existing incumbrances shall have been ascertained, the court shall proceed to order a distribution of the monies so brought into and remaining in court, among the several creditors having such incumbrances, according to the priority thereof respectively.

Distribution of moneys among creditors.

SEC. 40. The clerk of the court by whom any such incumbrance shall be paid off shall procure satisfaction thereof to

Clerk to procure discharge of incumbrances.

be acknowledged, in the form required by law, and shall cause such incumbrance to be duly satisfied or canceled of record, and shall defray the expenses thereof out of the portion of the monies in court belonging to the party by whom such incumbrance was payable.

Other parties
not to be
delayed.

SEC. 41. The proceedings to ascertain and settle the amount of incumbrances as herein provided, shall not affect any other party in such suit for partition, nor delay the paying over or investing the monies to or for the benefit of any party upon whose estate in the premises there shall not appear to be any existing incumbrances.

Sale of dower
or other life
estate.

SEC. 42. Whenever the estate of any tenant in dower, or for life, in the whole or any part or share of the premises in question, has been admitted by the parties, or ascertained by the court, to be existing at the time of the order for such sale, and the person entitled to such estate has been made a party to the proceedings, the court shall first consider and determine, under all the circumstances of the case, whether such estate ought to be excepted from such sale, or whether the same should be sold, and in making such determination, regard shall be had to the interests of all the parties.

Sale to pass
interest.

SEC. 43. If the sale of the premises, including such estate, shall be ordered, the estate and interest of every such tenant or person shall pass thereby, and the purchaser, his heirs and assigns, shall hold such premises free and discharged from all claims by virtue of any such estate or interest, whether the same be to any undivided share of a joint tenant or tenant in common, or to the whole or any part of the premises sold.

Payment to
owner of
estate, etc.,
with his
assent.

SEC. 44. Upon such sale being made of any such interest or estate, the court shall direct the payment of such sum in gross, out of the proceeds thereof, to the person entitled to such estate in dower, or tenancy for life, as shall be deemed upon the principles of law applicable to annuities, a reasonable satisfaction for such estate or interest, and which the person so entitled shall consent to accept in lieu thereof, by an instrument under seal, duly acknowledged or proved in the manner that deeds are required to be acknowledged or proved, to entitle them to be recorded.

Investment of
certain sum,
if consent
not given.

SEC. 45. In case no such consent is given at or before the coming in of the report of sale by the circuit court commissioner, then the court shall ascertain and determine what proportion of the proceeds of such sale, after deducting all expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate or interest in dower or for life, and shall order the same to be brought into court for that purpose.

Proportions
to be invested.

SEC. 46. The proportions of the proceeds of such sale, to be invested, shall be ascertained and determined in the several cases, as follows:

1. If an estate in dower shall have been included in such order of sale, its proportion shall be one-third of the proceeds of the sale of the premises, or of the sale of the un-

divided share in such premises, upon which such claim of dower existed;

2. If an estate for life shall be included in the order of sale, its proportion shall be the whole proceeds of the sale of the premises, or of the sale of the undivided share thereof, in which such estate shall be; and in all cases, the proportion of the expenses of the proceedings shall be deducted from the proceeds of such sale.

SEC. 47. If the persons entitled to any such estate in dower, or for life, be unknown, the court shall make an order for the protection of the rights of such persons, in the same manner, as far as may be, as if they were known and had appeared. Unknown owners.

SEC. 48. The circuit court commissioner shall give notice of any sale to be made by him, for the same time, and in the same manner, as is required by law on sales of real estate by sheriffs on execution. Notice of sale to be given.

SEC. 49. The terms of such sale shall be made known at the time, and if the premises consist of distinct lots, tracts or parcels, they shall be sold separately. Terms, and conduct of sale.

SEC. 50. No such circuit court commissioner, nor any person for his benefit, shall be interested in the purchase, nor directly or indirectly purchase any of the premises sold; nor shall any guardian of any infant party in such suit, purchase, or be interested in the purchase of any lands, being the subject of such suit, except for the benefit or in behalf of such infant; and all sales contrary to the provisions of this section shall be void. Who not to be interested in purchase.

SEC. 51. After completing such sale, the circuit court commissioner shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of such purchaser, and the price bid by him, which report shall be filed in the court. Report of sale.

SEC. 52. If such sales be approved and confirmed by the court, an order shall be entered directing the circuit court commissioner to execute conveyances pursuant to such sales; which such circuit court commissioner shall be authorized to do upon the entry of such order. Order for conveyances.

SEC. 53. Such conveyances so executed shall be recorded in the county where the premises are situated; and shall be a bar, both in law and equity, against all persons interested in any way, who shall have been named as parties in the said proceedings, and against all such parties as were unknown, if notice of the order to appear and answer shall have been given by such publication or service of notice as is hereinbefore directed; and against all other persons claiming from such parties, or either of them. Record of conveyances; effect.

SEC. 54. Such conveyances shall also be a bar against all persons having specific liens on any undivided share or interest therein, who shall have been made parties to the proceedings; but no creditor having any such specific lien shall be Effect on rights of creditor

affected by such sale or conveyance unless he shall have been made a party to the proceedings.

Costs and expenses.

SEC. 55. The costs and expenses of the proceedings shall be deducted from the proceeds of every sale made by the circuit court commissioner, and shall be by him, in the first instance, paid to the plaintiffs or their attorney.

Distribution of proceeds of sale.

SEC. 56. The proceeds of every sale, after deducting the costs, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises; and the shares of such of the said parties as are of full age, shall be paid to them or their legal representatives by the circuit court commissioner, or shall be brought into court for their use.

Shares of known infants.

SEC. 57. When any of such known parties are infants, the court may, in its discretion, direct the shares of such infant to be paid over to the general guardian, or to be invested in permanent securities at interest, in the name and for the benefit of such infant.

Shares of absent and unknown persons.

SEC. 58. Where any of the parties whose interests have been sold are absent from the State, without legal representatives in this State, or are not known or named in the proceedings, the court shall direct the shares of such parties to be invested in permanent securities at interest, for the benefit of such parties, until claimed by them or their legal representatives.

Tenants in dower or for life.

SEC. 59. Where the proceeds of a sale belonging to any tenant in dower, or for life, shall be brought into court as hereinbefore directed, the court shall direct the same to be invested in permanent securities at interest, so that such interest shall annually be paid to the parties entitled to such estate, during their lives respectively.

Security to refund.

SEC. 60. The court may, in its discretion, require all or any of the parties, before they shall receive any share of the monies arising from such sales, to give security to the satisfaction of such court, to refund the said share with interest thereon, in case it shall thereafter appear that such party was not entitled thereto.

In whose name security to be taken.

SEC. 61. When any security is directed to be taken by the court, or any investment to be made, or any security shall be taken by a circuit court commissioner on the sale of any real estate as hereinbefore directed, except where provision shall be made for taking the same in the name of any known owner, the bonds, mortgages or other evidences thereof shall be taken in the name of the clerk of the court in whose office the original bill was filed and his successors in office, who shall hold the same by virtue of his office, and shall deliver them to his successor.

Duty of clerk.

SEC. 62. Such clerk shall receive the interest or principal of any sums as they become due, and apply or re-invest the same, according to the circumstances of the case, as the court shall direct; and shall, once in every year, render to the court

an account in writing, and on oath, of all monies received by him, and of the application thereof.

SEC. 63. All investments, or re-investments, under the provisions of this chapter, shall be made on bond and mortgage upon unincumbered real estate, of at least double the value of such investment, exclusive of buildings, or in other equivalent security; and no such security, bond, mortgage or other evidence of such investment, shall be discharged, transferred or impaired, by any act of the clerk, without the order of the court entered in the minutes thereof. Investments, how made.

SEC. 64. Any person interested in such investment, may, with the leave of the court, prosecute the same, in the name of the existing clerk, and no suit shall be abated by the death, removal from office, or resignation of the clerk to whom such securities or evidences were executed, or of any of his successors. Suits on securities.

SEC. 65. When a decree confirming the partition made by any commissioners, shall be entered as provided in this chapter, the court shall also adjudge and decree that each of the parties concerned therein, other than the plaintiffs, pay to such plaintiffs a proportion of the costs and charges of the proceedings, to be ascertained by the court, according to the respective rights of the parties, and the proportion of such costs and charges assessed upon the unknown owners, to be chargeable on the part remaining undivided; and upon such decree execution may issue as in other cases, and may be levied on the property of the parties respectively charged with such costs, and upon any share or part of the premises allotted on any such division to any owner unknown, or not named, and upon every portion remaining undivided, for the proportion adjudged to be paid by such owners, or chargeable to the part remaining undivided. Costs, how assessed and collected.

SEC. 66. A sale of the premises of such owner unknown, upon such execution, shall be as valid as if such owner had been named in the proceedings, and in such execution. Sale of premises of unknown owner.

SEC. 67. If a bill for partition shall be dismissed, or the suit shall be discontinued, the plaintiffs shall pay costs to be collected, as in other cases. When plaintiffs to pay costs.

SEC. 68. Any of the parties to a suit for the partition or sale of any premises under the provisions of this chapter, and any party interested in the premises, though not named in the proceedings, may, jointly or separately, and without the consent of any co-plaintiff or co-defendant, appeal from any decree or order of the said court, upon any such proceedings, within the same time, and under the like regulations, as in other cases. Appeal.

SEC. 69. Whenever it shall appear satisfactorily to the court, by due proof, or on report of a circuit court commissioner, that any infant holds real estate in joint tenancy, or in common, or in any other manner which would authorize his being made a party to a suit in partition, and that the interest of such infant, or of any other person concerned

Partition or sale of infants' estate.

therein, requires that partition of such estate should be made, such court may direct and authorize the general guardian of such infant to agree to a division thereof, or to a sale of such premises, or of such part thereof, as in the opinion of the court shall be incapable of partition, or as shall be most for the interest of such infant to be sold.

Report of
guardian.

SEC. 70. Such guardian shall report to the court, on oath, the partition or sale so made by him, and if the same be approved and confirmed by the court, an order shall be entered authorizing such guardian to execute conveyances of the right of such infant to such part of the said estate as shall have been sold, to the purchaser thereof; or to execute releases of the rights of such infant to such part of the said estate, as in the division falls to the shares of the other joint tenants, or tenants in common.

Order for
conveyances,
etc.

Effect
of deeds.

SEC. 71. Such deeds shall be as valid and effectual to convey the share and interest of such infant, as if the same had been executed and duly acknowledged by such infant after arriving at full age; and in case of the sale of any part of such estate, the infant shall be deemed a ward of the court, and such order shall be taken as the court may direct, for securing, investing and applying the proceeds of the sale, and for requiring security from the guardian for that purpose.

Infant
deemed ward
of court.

When infant
is married,
husband may
be guardian.

SEC. 72. Whenever such infant shall be a married woman, the court may, upon petition, appoint her husband as her guardian, and in case of the appointment of the husband, the provisions of the three last preceding sections shall apply to such husband.

Partition by
guardians of
lunatics, etc.

SEC. 73. Whenever it shall appear to the court, on the application of the guardian of any idiot, lunatic, spendthrift, or person mentally incapable of managing his affairs, holding any estate in joint tenancy or in common, or in any other manner to authorize his being made a party to a suit in partition, that the interest of such idiot, lunatic, or other person aforesaid, or any of the parties interested in such estate, requires a partition thereof, it shall be referred to a circuit court commissioner to inquire into and report upon the circumstances.

Inquiry by
commissioner.

Releases,
court may
authorize.

SEC. 74. Upon the coming in of the report, and a hearing and examination of the matter, the court may authorize such guardian to agree to a partition of such estate, and to execute releases of the right of such idiot, lunatic, or other person as aforesaid, in and to the shares of such estate falling to the other joint tenants, or tenants in common.

Effect of
releases.

SEC. 75. Such releases shall be as valid and effectual to convey the share of such idiot, lunatic, or other person as aforesaid, as if the same had been executed by them respectively, when of sound mind and understanding, and not subject to guardianship, and for a valuable consideration.

Partition
when state is
interested.

SEC. 76. When any lands shall be held by the people of this State, and by individuals as tenants in common, proceedings for the partition thereof may be had against the people

of this State in the circuit court, in the same manner as against individuals, and the like orders and decrees shall be had therein, and the proportion of the costs and expenses of such partition, adjudged to be paid by the people of this State, shall be certified by the Attorney General, and paid out of the State treasury on warrant of the Auditor General.

SEC. 77. The summons to answer, and all notices required to be served in other cases, shall be served on the Attorney General, who shall appear in behalf of the State, and attend to its interests. Service of summons, etc.

SEC. 78. The authority given by this chapter to proceed for the partition of real estate, shall not authorize the revival or prosecution of any claim to lands which would, or otherwise might be barred by the statute of limitations, or by the acquiescence of any party having any such claim. Claims barred by statute of limitations, etc.

SEC. 79. Whenever partition shall be decreed by any circuit court, if it shall appear that it cannot be made equal between the parties, without prejudice to the rights and interests of some of them, the court may decree compensation to be made by one party to the other, for equality of partition, according to the equity of the case. Compensation for equality of partition.

SEC. 80. The provisions of this chapter shall be applicable to lands held by a trustee for the benefit of parties having a beneficial interest therein, and the proceedings for a partition may be instituted by the trustee, or any party interested in the lands so held, and shall be regulated by the provisions of this chapter, except as is hereinafter provided. Application to lands held by trustee.

SEC. 81. Where the original parties in interest in said trust, or any of them, may have departed this life, leaving heirs or legatees, or others interested by title or right through them or any of them in said lands, it shall be competent for the court, at its discretion, to divide the said land by decree, among the said heirs, legatees, or others representing the interests of the deceased therein, so as to set off the interest of all such parties together, without subdivisions among them. Division of lands among heirs, etc.

SEC. 82. In any case where it may be deemed expedient to decree that the interest which may have belonged to any deceased party shall be set off in a body, without subdivision to those claiming under him, it shall be sufficient to provide by the decree that such parcel or interest shall be set off to the heirs, assigns, or those legally entitled under or through the party originally interested, who may have deceased, mentioning his name in the decree. Interest set off in body without subdivision.

SEC. 83. In all cases where the original parties in interest are fully known, but where, by death, legal proceedings or by other operations of law, it has become uncertain who are the present parties in interest, it shall be competent and lawful to separate the portion or interest in such lands, originally owned by said parties, in the manner provided in the foregoing sections, instead of leaving it with land undivided as belonging to unknown owners, and such divisions and decree shall operate to convey the title to those claiming under Partition where original parties in interest are fully known.

said party, according to their legal rights, whatever they may be.

Appointment
of receiver in
certain cases.

SEC. 84. Whenever it shall appear that it would be beneficial to any part owner of the premises of which partition is sought, that the same should be leased or protected from waste, trespasses, or injury, or for any other purpose, it shall be competent for the court to appoint a receiver thereof, with such authority as may be necessary in the premises.

Duty of court
under judg-
ment, in case
of married
women.

SEC. 85. In all cases of sales under judgment or decree in partition, where it shall appear that any married woman has an inchoate right of dower in any of the lands divided or sold, or that any person has any vested or contingent future right or estate in such lands, it shall be the duty of the court under whose judgment or decree such sale is made, to ascertain and settle the proportional value of such inchoate, contingent, or vested right or estate, according to the principles of law applicable to annuities and survivorships, and to direct such proportion of the proceeds of the sale to be invested, secured, or paid over in such manner as shall be judged best to secure and protect the rights and interests of the parties.

How
married
woman may
release in-
terest in
estate.

SEC. 86. Any married woman may release such right, interest, or estate to her husband, and acknowledge the same before the commissioner making the sale, or before any officer authorized to take acknowledgments, or if executed out of this State, to be executed, acknowledged, and certified as required by the laws of this State for the execution, acknowledgment, and certification of deeds, in any other state, territory, or district of the United States, and upon such release the share of the sale arising from her contingent interest shall be paid to her.

Release a bar.

SEC. 87. Such release, and also the payment, investment, or otherwise securing any share of the proceeds of the sale, according to section eighty-five of this chapter, shall be a bar, both in law and equity, against any such right, estate or claim.

Of the Division and Distribution of Property Held in Trust Under Certain Circumstances.

Division
among
cestuis que
trust instead
of sale.

SEC. 88. In any estate vested in a trustee or trustees for the benefit of any person or corporation, whether by will or other grant or conveyance, where a provision is made for the sale of the trust property and distribution of the proceeds, and where no limitation is placed upon the power of alienation, nor restriction made as to the time of the division and distribution of the proceeds of the trust property, and it shall appear to be more advantageous to the persons for whose benefit the trust was created to divide and distribute the trust property among them, instead of effecting a sale thereof by the trustee, and the distribution of the proceeds, the trustee, upon authority being granted so to do by the circuit

court in chancery of the county where the property, or a portion thereof, is located, may make a division and distribution of the trust estate, among the persons entitled to the proceeds of the sale thereof in the same proportion in which the proceeds of the sale is provided by the terms of the instrument or grant creating the trust to be distributed.

SEC. 89. In all cases except where all the parties to be benefited by the distribution of the proceeds of the sale of the trust estate shall give their consent in writing to the division and distribution of the trust estate as above provided, the proceedings to obtain the authority of the court as aforesaid to divide and distribute said estate, may be instituted by the trustee or any person interested in such division and distribution, and shall conform to the provisions of the preceding sections, relating to partition of lands, and the division and distribution, if authorized by the court, shall be effected in the manner provided by said preceding sections for partitioning the undivided interests of persons in real estate generally.

Where all parties do not consent.

SEC. 90. Such division or distribution of a trust estate may be made by a trustee without obtaining the authority of the court as aforesaid, when all the persons who would be entitled to share in the proceeds of the sale of such estate shall consent thereto in writing, and such trustee shall make such division and distribution when all of the parties interested as aforesaid shall so request in writing.

Division made by trustee, where all persons consent in writing.

SEC. 91. When any of the persons entitled to share in the distribution of the proceeds of the sale of such trust estate shall be a minor, or insane, or incompetent to give their consent, or make such request, such division and distribution shall not be made without the authority of the court as aforesaid, unless such minor, insane or incompetent person shall have a general guardian, in which event such general guardian, upon obtaining the authority of the court appointing such guardian to consent to such division and distribution, or request that the same shall be made by the trustee, shall have the same power and authority to consent to such division and distribution or make request therefor, and agree upon a method of effecting such division and distribution as a person of full age and otherwise competent to act in the premises could do. The authority of the court appointing such guardian to give such consent, or make such request, may be obtained by such guardian filing with such court a petition showing the circumstances which it is deemed renders it to the advantage of such minor, insane or incompetent person to have such distribution or division made.

Consent of minor, insane or incompetent person.

CHAPTER XXXII.

Platting Lands of Incompetent Persons.

Infant, etc.,
may apply
to court of
chancery.

By whom
application
made.

Proviso, ap-
pointment of
next friend.

Court to ap-
point
guardian.

Bond of
guardian.

Prosecution
of bond.

Circuit court
commissioner
to inquire.

Dedication
etc.

SECTION 1. Any infant, idiot, lunatic or other incompetent person, seized of any real estate, may apply to the circuit court in chancery for the county where the property may be situated, if the infant, idiot, lunatic or other incompetent person be not a resident of this State, and if a resident of this State, then to the circuit court in chancery of the county in which he may be a resident, for the laying out, dividing and platting into lots, streets and alleys, of such real estate in the manner hereinafter directed. If the applicant has a guardian, then the application shall be made by such guardian, and if he has no guardian or the guardian is a non-resident, application may be made by a next friend, who may be authorized to act as such by said court: *Provided*, That if the application be by an idiot, lunatic or other incompetent person, his next friend shall be appointed on the petition of the person or persons having the custody of the person of such idiot, lunatic or other incompetent; and if the application be made by an infant, the appointment of such next friend shall be made on his petition, but the court before authorizing a next friend to act for him, shall require proof that his guardian, if he have one, or his parents, or other near relatives, if he have no parents, have knowledge of the intention to make such application, and unless it shall appear that such persons have knowledge of such intention, shall direct notice of the application to be given to such guardian, parents or other relatives.

SEC. 2. On such application, the court shall, if necessary, appoint one or more suitable persons to be guardians of such infant, idiot, lunatic or other incompetent person, in relation to the proceedings on such application.

SEC. 3. The guardian shall give bond to such infant, idiot, lunatic, or other incompetent person, to be filed with the clerk of said court in such penalty with such sureties and in such form as the court shall direct, conditioned for the faithful performance of the trust reposed; for the paying over, investing and accounting for all moneys that shall be received by such guardian according to the order of any court having authority to give directions in the premises, and for the observance of the orders of the court in relation to the said trust.

SEC. 4. If such bond be forfeited, the court shall direct it to be prosecuted for the benefit of the party injured.

SEC. 5. Upon the filing and approval of such bond, the court may proceed in a summary manner, on oral or other testimony, or by reference to a circuit court commissioner, to inquire into the merits of such application.

SEC. 6. Whenever it shall appear satisfactorily that the interest of such infant, idiot, lunatic, or other incompetent

person requires, or will be substantially promoted by the laying out, dividing and platting into lots, streets and alleys of the real estate of such infant, idiot, lunatic, or other incompetent, for any reason or circumstances, the court may order such real estate to be laid out, divided and platted into lots, streets and alleys, by the guardians of such infants, idiots, lunatics and other incompetent persons, and such streets and alleys to be dedicated to the public in such manner and with such restrictions as shall be deemed expedient.

SEC. 7. Upon a plat of such real estate being made in pursuance of such order, the same shall be reported to the court on the oath of the guardian making the same, and if it be confirmed, a plat of such real estate shall be executed under the direction of the court.

Guardian
to report plat
on oath.

SEC. 8. All plats of such real estate made in good faith by the guardian in pursuance of such order, when so confirmed, shall be as valid and effectual as if made by such infant, idiot, lunatic or other incompetent person, when of lawful age and sound mind.

Validity
of plat.

SEC. 9. From the time of such application to the court, the infant, idiot, lunatic or other incompetent person, shall be considered as a ward of the court, in so far as relates to such real estate and the platting thereof.

Ward of
court.

CHAPTER XXXIII.

General Provisions Concerning Actions Relating to Real Estate.

SECTION 1. If any tenant for life, or in dower, or any tenant for years, be impleaded, and the person to whom the reversion or remainder appertains, shall come into court, before trial or judgment by default, and pray to be received to defend his right, he shall be permitted to plead to the action, upon such terms as the court may deem just.

Reversioners,
etc., per-
mitted to
defend.

SEC. 2. If any tenant for life or years make default or give up any lands demanded, so that judgment be given on such default or surrender, the person to whom the reversion or remainder of such lands appertains, may, after the termination of the estate of such tenant, have an action of ejectment to recover the same lands.

Reversioner,
etc., to sue
after default
of tenant.

SEC. 3. All recoveries had by agreement of parties, or by fraud, against any tenant for life, or in dower, of any lands, tenements or hereditaments, shall be void as against all persons to whom any reversion or remainder of such lands shall appertain, and as against their heirs, unless the appearance of the person having such reversion or remainder shall have been duly entered in the court where such recovery shall be had.

Certain
recoveries
void as to
reversioners.

SEC. 4. No execution shall be avoided by means of any feigned recovery, but all persons entitled to have execution of the lands, tenements or hereditaments, shall have the like

Feigned
recoveries.

means to avoid and falsify the same recoveries as a tenant of the freeholder [freehold], who was neither party nor privy to such recovery, has by the course of the common law.

Rights of
lessees
for years.

SEC. 5. A lessee for years may falsify for his term only, recoveries, in the same manner as a tenant of the freehold, who was neither party nor privy to the recovery, may do by the course of the common law; and such lessees, and their personal representatives and assigns, notwithstanding any recoveries that may be so falsified, shall hold their terms according to their demises, as if such recovery had not been had.

Rights of
parties re-
covering.

SEC. 6. After any recovery had, the recoverers, their heirs and assigns, shall have the like remedies against any lessees for years, their representatives and assigns, for any rents or services reserved, coming due after such recoveries, and also like actions for waste done after such recoveries, as the lessors might have had, if such recoveries had not been made.

Joint and
several actions
by heirs, etc.

SEC. 7. When any person shall die, leaving heirs, either in the same or in different degrees; and where several persons shall be, in any other way, entitled to a real estate as tenants in common, or as joint tenants, they may bring a joint action for the recovery thereof, or may bring several actions for their respective shares or interests.

Guardians
for infant
defendants.

SEC. 8. Actions relating to real property shall not be delayed, nor shall the remedy of any plaintiff be superseded by reason of the infancy of any defendant therein; but guardians to defend the rights of infant defendants, shall be appointed as in personal actions; and in all such actions against an infant, if he do not procure the appointment of a guardian within the time required for his appearance therein, the plaintiff may proceed to have such guardian appointed as in personal actions.

Order for
survey of
lands.

SEC. 9. Whenever the court in which any action relating to real property shall be pending, shall be satisfied that any survey of any premises in the possession of either party, or of any boundary line between the lands of the parties, or between the lands of either of them and the lands of other persons, is necessary or expedient to enable either party to declare, plead or prepare for trial, or for any other proceeding in such action, it may, by rule of court, upon the application of either party, order that such party have leave to make such survey.

Order,
contents
and service.

SEC. 10. Such order shall specify the premises or boundary line to be surveyed, by a description as definite as may be; and a copy of the same shall be served previous to such entry, on the owner or occupant of the premises upon which it may be necessary to enter, to make such survey.

Authority to
enter upon
premises and
survey.

SEC. 11. The party obtaining such order, his necessary surveyors, assistants and agents, may enter upon any premises necessary for the purpose of making such survey, and may there make the same, after having served a copy of such rule, as hereinbefore directed; and for so doing, no person acting

under such order shall be liable to any action of trespass or other action; but every such person shall be responsible in an action on the case, for any unnecessary injury caused by him.

SEC. 12. No imparlance, voucher, aid-prayer or receipt, shall be allowed; but whenever any action shall be brought against any tenant, to recover the land held by him, or the possession of such land, the landlord of such tenant, and any person having any privity of estate with such tenant, or with such landlord, in the premises in question, or in any part thereof, may be made defendant with such tenant, in case he shall appear for that purpose.

Imparlanes,
etc., abolished.

Landlord, etc.,
may defend.

SEC. 13. Whenever any action for the recovery of any lands or tenements, or for the recovery of the possession thereof, shall be commenced against any person in possession of the premises in question, or in the receipt of the profits thereof, such action shall not be barred or delayed by reason of any alienation or conveyance made by such person to any other, either before or after the commencement of such action.

Alienation by
defendants.

SEC. 14. If the defendant in any action for the recovery of land, or the possession of land, shall alien the land in question, pending the suit, and shall have no property whereof the damages for the issues and profits of such land recovered against him may be levied, every person to whose hands such lands shall have come, shall be liable to an action for such damages for the time that he shall have possessed the premises.

Liability of
purchasers
during suit.

SEC. 15. Whenever a writ of possession shall be issued upon a judgment in any action relating to real property, the plaintiff may include in the same process an execution against the property of the defendant, to collect the costs or damages, which may be due, in the same cases in which he would be authorized to issue such execution separately.

Writ of
possession
may include
execution.

SEC. 16. The practice in actions relating to real estate, shall be the same in all respects as in personal actions, except where otherwise specially provided by law; and proceedings may be stayed in the like cases, and all the provisions of law respecting pleadings, process, records and judgments, in personal actions, shall, so far as the nature of such actions will admit, apply to actions, relating to real estate.

Practice in
real actions.

SEC. 17. All writs of right, writs of dower, writs of entry, and writs of assize, all fines and common recoveries, and all other real actions known to the common law, not enumerated and retained in this title, and all writs and other process heretofore used in real actions, which are not specially retained in this title, are abolished.

Certain
process and
actions
abolished.

Of Trespass on Lands.

SEC. 18. If, upon the trial of any action for trespass on lands, it shall appear that the trespass was casual and involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed

Judgment
for single
damages only.

was his own; or that such wood, trees, or timber were taken for the purpose of making or repairing any public road or bridge; judgment shall be given to recover only the single damages assessed.

Recovery
of treble
damages.

SEC. 19. If any person shall be ejected or put out of any lands or tenements in a forcible and unlawful manner, or being put out, be afterwards held and kept out by force, he shall be entitled to maintain an action therefor, and shall recover therein three times the amount of damages assessed by the jury or a justice of the peace in the cases provided by law.

Waste after
commence-
ment of action.

SEC. 20. After the commencement of any action on the case for waste, or any action for the recovery of land, or of the possession of land, the defendant shall not make any waste of the land in demand, or premises in question, during the pendency of the suit; and if such defendant shall commit any waste thereon, or shall threaten or make preparations to commit waste thereon, the court in which such suit is pending, or any circuit judge, or circuit court commissioner, either in term or vacation, shall have power, on the application of the plaintiff, to make an order restraining the defendant from the commission of any waste, or further waste thereon. Any person who shall violate the terms of any such order, shall be deemed guilty of contempt of the court in which such action is pending, and shall be punishable as in other cases of contempt.

Restraining
order.

Liability.

CHAPTER XXXIV.

Proceedings at Law in the Nature of a Judgment Creditor's Bill.

Discovery of
property
on oath.

SECTION 1. When an execution against the property of a judgment debtor, issued to the sheriff of the county in which he resides, or, if he reside out of the State, to the sheriff of the county in which the judgment was recorded, or a transcript thereof filed, shall be returned unsatisfied in whole or in part, the judgment creditor may obtain an order from the judge of the court in which the judgment was obtained, or from the judge of the circuit court for the county in which the defendant resides, or from the circuit court commissioner of any such county, or of the county in which a transcript may have been filed as aforesaid, requiring the judgment debtor to appear and make discovery on oath, concerning his property or any debts due or to become due to him, before such judge or commissioner, at a time and place specified in the order.

Witnesses.

Person having
property of
defendant
may be
examined.

SEC. 2. Witnesses may be required to appear and testify in any proceeding under this chapter, in the same manner as upon the trial of an issue in the circuit court. And upon an affidavit, showing to the satisfaction of such judge or commissioner, that any person has property of the judgment debtor, or is indebted to him, the judge or commissioner may

issue an order requiring such person to appear at a specified time and place, and be examined on oath concerning the same. Such judge shall take written notes of the substance of all the material facts stated by any party or witness on such examination.

SEC. 3. If the party or witness reside in the county where the order is made, he shall be required to attend before the judge of the circuit court, or before the commissioner for such county; if in any other county, before a referee, as provided in section seven of this chapter. In the latter case the examination shall be taken in writing, and certified to the court or judge.

Before whom party or witness to appear.

SEC. 4. The judge may order any property of the judgment debtor not exempt from execution, in the hands of either himself or any other person, or any property, debt or demand due or to become due to the judgment debtor, and not exempt as aforesaid, to be applied on execution towards the satisfaction of the judgment, or he may order any such property to be made liable to, and sold on any execution issued or to be issued on the judgment.

Order to apply property on execution.

SEC. 5. The judge may also by an order appoint a receiver of the property of the judgment debtor, with the like powers and authority as receivers heretofore appointed by courts of equity in this State. The judge or commissioner may also by an order forbid a transfer of the property of the judgment debtor and any interference therewith, and such order shall have the like effect as an injunction from a court of equity.

Receiver.

Restraint of transfer of property.

SEC. 6. If it appear that the person or persons so brought before the judge or commissioner by the aforesaid judgment creditor, claims an interest in the property of the judgment debtor, adverse to him, such interest shall be recovered only in an action by the receiver; but the judge or commissioner may, by an order, forbid a transfer or other disposition of such interest till a sufficient opportunity be given to the receiver to commence the action; but such receiver shall bring no action unless at the request of the judgment creditor, and at his expense in case of failure, and he may require such reasonable security against all costs as he may think proper, before commencing such action.

Recovery of interest in property adverse to judgment debtor.

SEC. 7. The judge may in any case order a reference to a referee agreed upon or appointed under this section, provided to take and report the evidence; or if agreed upon, to report the fact as found by such referee. If the parties or their attorneys agree upon such referee, the court shall appoint the person so agreed upon; if they do not agree, the judge shall appoint some competent and disinterested person as such referee.

Appointment of referees to take proofs.

SEC. 8. The judge may allow to the judgment creditor, or to any party examined, whether a party to the action or not, witness fees and disbursements, and a fixed sum in addition, not exceeding thirty dollars, as costs.

Fees allowed to creditor, etc.

Penalty for disobedience of order.

SEC. 9. If any party or witness shall disobey any order of the judge or commissioner, made in pursuance of this chapter, and duly served, such party or witness may be punished by the judge, as for a contempt, in the same manner as the circuit court may punish for contempt.

Record of proceedings.

SEC. 10. Any of the proceedings authorized by this chapter to be had before the judge, may be had before him in court, at any session of the circuit court, or at chambers; and when had before such judge at chambers, all orders made by him, and the papers on which the same were founded, shall, within five days after such order, be delivered by such judge, together with the evidence taken by him, or any referee, to the clerk of the circuit court for his county, and shall be by him filed and preserved in his office, which shall constitute the record of the proceedings, and copies thereof, certified by such clerk, shall be conclusive evidence of the order and proceedings therein stated.

Final order to have force of decree.

SEC. 11. Any final order made in pursuance of the provisions of this chapter, shall have the like validity and force as the decree of a court of equity, under the laws and the practice of such courts at the time such order is made; and any such order in respect to real estate, or a certified copy thereof, may, if not appealed from, be recorded in the office of the register of deeds of the county in which such real estate is situated.

Record in office of register of deeds.

Appeal.

Proceedings on appeal.

SEC. 12. Any final order made under any of the provisions of this chapter, may be appealed from, to the supreme court, within twenty days after the same is made, by complying with the following provisions: The party appealing shall make an affidavit setting forth the particular matters complained of in the proceedings or order, and shall deliver the same to the clerk of the court in which the papers are filed. To render an appeal effectual for any purpose, the following provisions must be complied with: If the judgment creditor appeal, he must, within said twenty days, enter into a written undertaking, with sureties, who shall justify before the clerk, unless their sufficiency be admitted by the opposite party, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred dollars; or that sum may be deposited with the clerk with whom the order is entered. Such undertaking or deposit may be waived by the written consent of the opposite party. If the appeal be taken by any other party than the judgment creditor, and if the order appealed from be for the payment of money or the delivery of property, a written undertaking must be executed by the appellant, or some person on his behalf, with two sureties, who shall justify as aforesaid, unless their responsibility be admitted as aforesaid, to at least double the amount of the money or property ordered to be paid or delivered, to the effect that if the order appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid or

deliver the property in as good condition as the same is at the time of the appeal, as shall be determined on appeal, and all damages and costs which shall be awarded against the appellants. If the order appealed from direct the assignment or delivery of papers or documents by the appellant, the papers ordered to be assigned or delivered, must be delivered to the clerk with whom such proceedings are filed, or placed in the hands of such officer or receiver, as the judge having made the order shall direct, to abide the event of the appeal, and subject to the order of the supreme court. If the order appealed from direct the sale of the real estate of the appellants or the delivery of possession by them, a written undertaking must be entered into by him, with two sureties, satisfactory to the judge making the order, and filed with such clerk, to the effect that during the possession of such property by him, or any person holding under him, he will not commit or suffer any waste thereon, and that, if the order be affirmed, he will pay the value of the use of such property from the time of the appeal until the delivery of possession thereof.

SEC. 13. When all acts, matters and things required by the last preceding section shall have been done by the appellant, notice that such appeal has been taken shall be given in writing to the opposite party or his attorney, if either is to be found in the county; if not, such notice may be left with such clerk, and upon proof to such clerk that such notice has been given as aforesaid, such clerk shall, within ten days, attach together all the orders in the proceedings appealed from, and all the affidavits upon which any of them are founded, in the order of their dates, and shall attach thereto all the testimony and examinations of parties and witnesses, which shall have been filed with him in relation thereto, and shall certify them under the seal of the circuit court, and cause the same to be delivered to the clerk of the supreme court to be filed, and thereupon the supreme court shall be possessed of the cause.

Notice
of appeal.

Clerk to
make return
to supreme
court.

SEC. 14. On such appeal the supreme court may reverse, affirm or modify any such order appealed from, in any particular complained of in the affidavit upon which the appeal is founded. It may for that purpose, look into all the proceedings, and the facts as stated in the evidence returned on the appeal; and it may order a re-hearing of the whole matter, or any part thereof, before the judge making the order, or it may make such final order in the premises and award such costs as justice may require; and such last named order shall have all the force and effect of a final decree in a court of equity, according to the laws existing at the time such order is made; and may be recorded in the same manner, and enforced under such general or special rules as said court may adopt.

Reversal,
affirmance or
modification
of order.

Rehearing.

Final decree.

SEC. 15. After the issuing of execution by any court against or for the taking of any property, any person in-

Payment to
officer holding
execution.

debted to the judgment debtor may pay to the officer having the execution the amount of his debt, or so much thereof as shall be necessary to satisfy the execution, and the receipt of the officer having such execution shall be a sufficient discharge therefor.

CHAPTER XXXV.

Collection of Penalties, Fines and Forfeited Recognizances.

Penalties, etc.,
recoverable
by action.

SECTION 1. In all cases not otherwise specially provided for by law, where a pecuniary penalty or forfeiture shall be incurred by any person, and the act or omission for which the same is imposed, shall not be also a misdemeanor, such penalty or forfeiture may be recovered in an action of assumpsit; and if it be a forfeiture of any property, it may be sued for and recovered in an action of trespass on the case.

Action, how
brought and
conducted.

SEC. 2. Every such action shall be brought in the name of the people of the State of Michigan, and shall be conducted and prosecuted in the same manner as personal actions, and shall be subject to all the provisions of law concerning personal actions, not repugnant to the provisions of this chapter.

Violation of
ordinance.

SEC. 3. Whenever a pecuniary penalty or forfeiture shall be incurred for the violation of any ordinance of any city or village, and no provision shall be made for the imprisonment of the offender upon conviction therefor, such penalty or forfeiture may be recovered in an action of assumpsit; and if it be a forfeiture of any property, it may be sued for and recovered in an action of trespass on the case, or other appropriate action. Whenever a corporation shall incur a penalty or forfeiture for the violation of any ordinance, the same shall be sued for in one of the actions aforesaid.

Corporations.

How action
brought.

SEC. 4. Such action shall be brought in the name of the city or village. The form, time of return and service thereof, the pleadings and all the proceedings in the cause shall, except as otherwise provided herein, conform to and be the same as nearly as may be, as in like actions provided by law for the recovery of penalties for violations of the laws of the State. Upon the rendition of judgment against the defendant, execution shall issue forthwith, and except when against a corporation, shall require, if sufficient goods and chattels cannot be found to satisfy the same, that the defendant be committed to prison, there to remain for a period not exceeding ninety days, unless such execution be sooner paid, or he be discharged by due course of law; but imprisonment without payment shall not operate as a satisfaction of the judgment, nor shall costs be allowed to the defendant in any such action.

Execution.

Imprisonment.

Jurisdiction
of justices.

SEC. 5. Justices of the peace shall have jurisdiction of all actions for the recovery of penalties or forfeitures, where the amount of the penalty or forfeiture shall not exceed one hundred dollars.

SEC. 6. Whenever an action of assumpsit shall be brought for the recovery of any penalty or forfeiture imposed by any statute, it shall be sufficient, without setting forth the special matter, to allege in the declaration, that the defendant, being indebted to the plaintiffs in the amount of such penalty or forfeiture, according to the provisions of the statute by which such penalty or forfeiture is imposed, referring to such statute, undertook and promised to pay the same.

Declaration in assumpsit.

SEC. 7. If an action of trespass on the case be brought to recover any goods or other things forfeited by the provisions of any statute, the declaration may allege that such goods or other things were forfeited according to the provisions of such statute, referring to the same as prescribed in the foregoing section, without setting forth the special matter.

Declaration in trespass on the case.

SEC. 8. To every declaration for a penalty or forfeiture, the defendant may plead the general issue, which shall be in the same form as in personal actions; and may give in evidence under such plea any special matter in bar of the action, or in discharge of the defendant therefrom, in the same manner, and with the like effect as if a special notice thereof had been given.

Plea and evidence.

SEC. 9. When a penalty or forfeiture is imposed by law for any act or omission, not exceeding any specified sum, an action may be brought for the highest sum so specified; and the jury, or justice before whom the trial shall be had, shall award the sum so specified to the plaintiff, or such part thereof, within the limitation prescribed by law, as shall be deemed proportionate to the offense.

Action where amount is not specified.

SEC. 10. In all cases where the penalty or forfeiture shall be one hundred dollars or more, such penalty or forfeiture may be recovered by indictment in the proper court of the county.

When may be recovered by indictment.

SEC. 11. When any act or omission is punishable according to law, by a fine, penalty or forfeiture, and imprisonment, or by such fine, penalty, or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor.

When act or omission deemed misdemeanor.

SEC. 12. It shall be the duty of every supervisor whenever he shall know, or have good reason to believe that any penalty or forfeiture has been incurred within his township, which shall be recoverable by action before a justice of the peace, according to the foregoing provisions of this chapter, forthwith to commence and prosecute a suit, in the name of the people of this State, for the recovery thereof.

Duty of supervisor to prosecute.

SEC. 13. It shall be the duty of every other township officer, who shall know, or have good reason to believe that any penalty or forfeiture has been incurred within his township, forthwith to give notice thereof to the supervisor.

Duty of other township officers.

SEC. 14. Whenever any supervisor shall know or have good reason to believe that any penalty or forfeiture has been incurred within his township, which cannot be recovered

When supervisor to notify prosecuting attorney.

before a justice of the peace, it shall be his duty forthwith to give notice thereof to the prosecuting attorney of his county.

Duty of
prosecuting
attorney.

SEC. 15. In the cases mentioned in the last preceding section, and in all other cases where the prosecuting attorney shall know or have good reason to believe that a penalty or forfeiture has been incurred within his county, it shall be the duty of such prosecuting attorney, without delay, to prosecute for such penalty or forfeiture; and in all cases where any suit shall be instituted by the supervisor as provided in this chapter, it shall be the duty of such prosecuting attorney, if requested by such supervisor, to attend to and conduct such suit on behalf of the plaintiffs.

Moneys to be
paid to county
treasurer.

SEC. 16. All sums of money collected on account of any penalty or forfeiture, in pursuance of the foregoing provisions of this chapter, shall be paid by the officer collecting or receiving the same, to the treasurer of the county within which such penalty or forfeiture was incurred, within twenty days after the collection or receipt thereof.

Payment over,
how com-
pelled.

SEC. 17. If any sheriff, justice of the peace, or other officer shall neglect to pay over any moneys collected or received by him on account of any penalty or forfeiture within the time limited in the preceding section, the county treasurer shall proceed by attachment in the circuit court for the county, to collect the moneys so required to be paid over to him, in the same manner, and with the like effect, as in case of an attachment against the sheriff for neglecting to return an execution in a civil suit.

Order that
defaulting
juror show
cause.

SEC. 18. When any grand or petit juror shall have been legally summoned to attend any court, and such juror shall not attend pursuant to such summons, the court shall cause an order to be entered in its minutes, that such defaulting juror show cause, on some day to be specified in such order, why a fine should not be imposed on him for such default.

Certified
copy of order
given to
sheriff.

SEC. 19. The clerk of the court by which such order shall be made shall immediately deliver to the sheriff of the county a certified copy of every such order.

Service and
return of
order.

SEC. 20. Such sheriff shall serve such order on the defaulting juror named therein, personally, by showing such certified copy, and delivering to him a copy thereof; and shall return such order and his proceedings thereon to the court, at or before the time when such juror shall be required to show cause.

Proceedings
on return.

SEC. 21. If the sheriff shall return such order personally served, and if no satisfactory cause be shown, the court shall proceed to impose such fine as shall be proper; and if the same be returned not personally served, the court shall make a further order, that such defaulting juror show cause, at the then next term, why such fine should not be imposed; and the same proceedings shall be had upon such order, as herein provided in respect to the first order, and such orders

shall be entered from time to time until the same be personally served, or the juror appear.

SEC. 22. But if it appear from the return of the sheriff, or from any other evidence, that such juror is dead, or insane, or has permanently removed from the State; or if any satisfactory excuse shall be rendered by any person in behalf of such juror, for his default, the court may abstain from any further proceedings in relation to such default. When proceedings to cease.

SEC. 23. When a fine shall be imposed by any court of law upon any grand or petit juror, or upon any constable, for non-attendance, or for any other cause, or upon any officer of such court, or upon any other person, without being accompanied by an order for the immediate commitment of the person so fined, until such fine be paid, it shall be the duty of the clerk of such court immediately to deliver a copy of the order imposing such fine, to the prosecuting attorney of the county in which such court shall be held. Order for fine to be delivered to prosecuting attorney.

SEC. 24. The prosecuting attorney shall, immediately after the adjournment of such court, issue process under the seal of the circuit court for the county, to the sheriff thereof, commanding him to collect of the several persons named in the schedule annexed to such process, the several sums affixed to their names respectively, in such schedule, and to pay over the same to the treasurer of his county. Prosecuting attorney to issue process to collect.

SEC. 25. To such process shall be annexed a schedule, containing in separate columns: Schedule to be annexed.

1. The names of the persons fined;
2. Their respective places of residence;
3. The amount of the fine imposed on each;
4. The cause of such fine being imposed;

which schedule shall be certified by the prosecuting attorney to contain a true abstract of the orders imposing such fines, delivered to him by the clerk.

SEC. 26. The sheriff to whom such process shall be directed and delivered, shall proceed to collect the amount of such fines respectively, of the several persons named in such schedule, by a levy and sale of the personal property of such persons, in the manner provided by law in the service of executions against property in civil cases, and shall be entitled to collect the same fees; and in case sufficient personal property cannot be found to raise such amount, such sheriff shall take the body of the person named in such schedule and detain him in custody, until he shall satisfy such sum, in the same manner as on executions against the body in civil cases, and shall be entitled for his services to the like fees. Execution of process.

SEC. 27. Every sheriff to whom any such process shall be delivered, shall return the same at the then next term of the circuit court for his county, after such delivery, with his proceedings thereon; and such return may be compelled by such circuit court, in the same manner as civil process. Return of process.

SEC. 28. If it shall appear by any such return that any fine has not been collected, the prosecuting attorney shall issue New process.

new process, similar in all respects to the first process herein directed; and such process shall be issued from time to time, until such fines shall be collected, and the same proceedings shall be had thereon, in all respects as herein provided.

Whom to
include in
process.

SEC. 29. But whenever a prosecuting attorney shall issue any process for the collection of any fine, he shall include in the schedule annexed to such process, the names of all persons upon whom any fine shall at that time have been imposed, and the process against whom has been returned unsatisfied, or against whom no process shall have been issued for the collection of such fine.

Actions on
recognizances.

SEC. 30. Whenever any recognizance to the people of this State shall have become forfeited, the prosecuting attorney of the county in which such recognizance was taken, shall prosecute the same by action of assumpsit; and the pleadings and proceedings therein shall be the same in all respects as in personal actions for the recovery of any debt; and upon a breach of the condition of the recognizance being found or confessed, or upon a judgment by default being entered against the defendant, the judgment shall be absolute for the amount of the penalty of the recognizance.

Execution
thereon.

SEC. 31. Executions shall be awarded and executed upon such judgments in the same manner as upon judgments in personal actions, and with the like effect in all respects.

Estreating
recognizances.

SEC. 32. Whenever any recognizance is directed by law to be estreated, such estreat shall be made by the entry of an order, directing the same to be prosecuted, and the same shall be prosecuted as herein directed.

Account by
prosecuting
attorney.

SEC. 33. The prosecuting attorney of each county shall, at the first term of the circuit court held in his county, after the first day of January in each year, render to such circuit court, on oath, an account in writing, of all moneys collected or received by him on account of any recognizances, fines, penalties or forfeitures, during the year then next preceding, and of all such matters relating to any proceedings for the recovery of any fines, penalties or forfeitures, as such court may require.

Remission of
fines and
recognizances.

SEC. 34. Upon the application of any person who shall have been fined by any court of law sitting in any county of this State, or of any person whose recognizance shall have become forfeited, or of his surety, the circuit court for the county in which such court was held, or in which such recognizance was taken, may, upon good cause shown, remit any such fine, or any such forfeiture of recognizance, or any part of such fine, or of the penalty of such recognizance, upon such terms as to such court shall appear just and equitable; and if any such fine shall have been paid, the officer in whose hands it may be, shall pay the same, or such part as shall have been remitted, according to such order.

Restriction
of power
to remit.

SEC. 35. But the last section shall not authorize such court to remit any fine imposed by any court upon a conviction for any criminal offense; nor any fine imposed by any

court upon any officer thereof, or any party therein, or upon any other person for an actual contempt of such court, or for disobedience of its orders or process; nor to remit or discharge any recognizance taken in one county for the appearance of any person in another; but the power of remitting or discharging such recognizance, shall be exercised exclusively by the circuit court for the county in which such person is bound to appear:

SEC. 36. No such application shall be heard until reasonable notice shall have been given to the prosecuting attorney, and until he shall have had an opportunity to examine the matter and prepare to resist such application. Notice of application.

SEC. 37. Nor shall such application in any case be granted, without payment of the costs and expenses incurred in the proceedings for the collection, either of such fine, or the penalty of such recognizance. Costs to be paid.

SEC. 38. When any person shall have been fined by any justice of the peace, upon a conviction for any offense, and shall have been committed to jail, there to remain until such fine shall be paid, the circuit court for the county may remit such fine, or any part thereof, and may discharge such person from his imprisonment; and shall exercise such power in the manner and subject to the provisions herein contained, in relation to fines and penalties of recognizances. Remission of fines imposed by justices.

SEC. 39. All officers or other persons, who shall collect or receive any moneys, on account of any recognizance, fine, penalty or forfeiture, shall pay over the same to the county treasurer, within twenty days after the receipt thereof, and in case of failure so to do, the county treasurer shall collect the same by attachment in the proper court, in the manner hereinbefore provided. Money received to be paid to county treasurer within twenty days.

SEC. 40. Every county treasurer shall keep an accurate account of all moneys paid to him on account of fines, penalties, and forfeitures, and shall credit all fines for the violation of the penal laws to the library fund, and all other fines, penalties and forfeitures to the general fund; and he shall account therefor to the board of supervisors at each annual meeting of such board. And in case of the sale of any real estate upon an execution upon judgment rendered for the breach of any recognizance in any criminal case it shall be the duty of the county treasurer, in case there are no bidders to the full amount of any such judgment or the value of the property advertised, to bid off the same; and in case the same shall not be redeemed within the time allowed by law for the redemption thereof, to sell the same for the best price he can obtain therefor, and place the money received in the general fund. County treasurer to keep account.

SEC. 41. Any officer who shall collect or receive any moneys on account of any fine, penalty, forfeiture or recognizance, and shall neglect or refuse to pay over the same according to law, or shall appropriate or dispose of the same to his own use, or in any manner not authorized by law, shall be Sale of real estate upon execution. Penalty for not paying over moneys.

deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

Execution
not to issue in
case of
alternative
sentence.

SEC. 42. Execution may issue for the collection of fines and costs imposed for misdemeanors, or offenses punishable by fine or imprisonment, or fine and imprisonment, in all cases where no alternative sentence or judgment of imprisonment shall have been rendered.

Issue and
return.

SEC. 43. Such execution shall be issued in the same form, and served and returned in the same manner, and have the same force and effect as executions now authorized to be issued, served and returned in civil actions commenced by warrant: *Provided*, That no person shall be imprisoned under and by virtue of such execution for a greater period than ninety days.

Proviso,
limit of im-
prisonment.

Execution on
forfeited
recognizance.

SEC. 44. Whenever any recognizance to the people of this State shall have become forfeited, and a judgment entered thereon, execution shall be awarded and executed upon such judgment in the same manner as upon judgments in personal actions, and with like effect: *Provided*, That if any real estate be sold by virtue of an execution awarded on such judgment, it may be redeemed as in other cases.

Proviso,
redemption of
real estate.

CHAPTER XXXVI.

Writs of Mandamus and Prohibition.

Returns to
be made to
writ or order.

SECTION 1. Whenever any alternative writ of mandamus, or order to show cause, shall be issued out of the supreme court, or by any circuit court of this State, the person, body, tribunal or officer to whom the same shall be directed and delivered shall make returns to said writ or order to show cause, and for a neglect to do so shall be proceeded against as for a contempt. And whenever on application to the supreme court for a mandamus against any circuit judge for the purpose of reviewing any order, decree or decision made by such judge, in any matter or proceeding pending before him, in court, at chambers or otherwise, an order is made requiring such judge to show cause why the prayer contained in such application should not be granted, his return shall be settled by causing a copy of his proposed return to such order to show cause, or to said writ, together with a notice when and where the same will be presented for settlement, to be served on the applicant or his attorney at least four days prior to the time of such settlement, which time shall be at least three days before the time designated, to show cause or the time of the return of such writ. Amendments to such showing, or return, may be proposed by the applicant or his attorney and all disputes respecting the

Mandamus
against
circuit judge.

Settlement
of return.

Amendments.

same shall be determined by such judge according to the facts on such settlement.

SEC. 2. In all cases where any order or determination of any court or judge shall be reviewable in mandamus proceedings, if such order or determination was made after hearing counsel in opposition thereto, it shall not be necessary to make a motion for the vacation of such order or determination before instituting mandamus proceedings to review the same. When motion to vacate order not necessary.

SEC. 3. No circuit court shall have jurisdiction to issue a writ of mandamus against any State officer. Mandamus against state officer.

SEC. 4. Whenever a return shall be made to any such writ, the person prosecuting the same may plead to all, or any of the material facts contained in said return; and such issue of fact thus joined, shall be determined as in other cases: *Provided*, That all material facts stated in said return, that are not specifically denied by plea, shall be taken as admitted to be true. In case no plea is filed to such return, the cause shall stand for hearing upon the petition and return. Such issue of fact shall be tried in the county within which the material facts are alleged to have taken place. Plea to return. Proviso, facts taken as true. Hearing.

SEC. 5. In case a verdict shall be found for the persons suing out such writ, he shall recover damages and costs in like manner as he might have done in an action on the case for a false return, and a peremptory mandamus shall be granted to him without delay. Damages and costs. Peremptory mandamus.

SEC. 6. A recovery of damages by virtue of this chapter, against any party who shall have made a return to a writ of mandamus, shall be a bar to any other action against the same party for the making of such return. Recovery to bar other action.

SEC. 7. The supreme court, or any justice thereof, or the judge of any circuit court, shall have the same power to enlarge the time for making a return and pleading thereto as in personal actions. Enlargement of time for return, etc.

SEC. 8. Whenever a peremptory mandamus shall be directed to any public officer, body or board, commanding them to perform any public duty, specially enjoined upon them by any provisions of law, if it shall appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars, upon every such officer, or member of such body or board, which fine, when collected, shall be paid to the State Treasurer, and be by him distributed and paid to the several county treasurers, and the same disbursed according to law. When court may impose fine.

SEC. 9. The payment of such fine shall be a bar to any action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined. Payment of fine bar to action.

SEC. 10. Writs of prohibition shall be issued only out of the supreme court; and such writs shall be applied for upon affidavits, by petition, in the same manner as writs of manda- Writs of prohibition.

mus; and if the cause shown shall appear to the court to be sufficient, a writ shall be thereupon issued, which shall command the court and the party to whom it shall be directed, to desist and refrain from any further proceedings in the suit or matter specified therein, until the next term of the said supreme court, and the further order of such court thereon; and then to show cause why they should not be absolutely restrained from any further proceedings in such suit or matter.

Service
and return.

SEC. 11. Such writ shall be served upon the court and party to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall in like manner be made thereto by such court, which may be enforced by attachment.

Proceedings
when party
adopts return.

SEC. 12. If the party to whom such writ of prohibition shall have been directed, shall, by an instrument in writing, to be signed by him, and annexed to such return, adopt the same return, and rely upon the matters therein contained, as sufficient cause why such court should not be restrained as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter, and the person prosecuting such writ may plead to all or any of the material facts contained in said return, and the like proceedings shall be had for the trial of issues of law or fact joined between the parties, and for the rendition of judgment thereupon, as in mandamus cases.

Proceedings if
return not
adopted.

SEC. 13. If the party to whom such writ of prohibition shall be directed, shall not adopt such return as above provided, the party prosecuting such writ shall bring on the argument of such return as upon a rule to show cause; and he may, by his own affidavit, and other proofs, controvert the matters set forth in such return.

Judgment if
return not
adopted.

SEC. 14. The court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, restraining the said court and party from proceeding in such suit or matter, do issue, or that the petition be dismissed.

Judgment if
return
adopted.

SEC. 15. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto as above provided, and judgment shall be rendered for the party prosecuting such writ, a prohibition absolute shall be issued; but if judgment be given against such party, such judgment shall be that the petition be dismissed.

Judgment
against
plaintiff
for costs.

SEC. 16. Whenever judgments shall be entered against the plaintiff in any proceedings for a writ of mandamus, or of prohibition, in any court authorized to issue such writs, the defendant in such proceedings shall be entitled to a judgment for costs, to be taxed as other cases, against the plaintiff and his surety, if any, and may have execution therefor.

CHAPTER XXXVII.

Of the Writs of Habeas Corpus and Certiorari.

Habeas Corpus to Bring up a Person to Testify.

SECTION 1. Every court of record shall have power upon the application of any party in any suit or proceedings, civil or criminal, pending in such court, to issue a writ of habeas corpus for the purpose of bringing before such court any prisoner who may be detained in any jail or prison within this State, to be examined as a witness in such suit or proceeding, in behalf of the party making such application: *Provided*, No person under sentence for felony shall be so brought up to testify in any civil cause.

Habeas corpus for witness.

SEC. 2. Every such application shall be verified by affidavit, and shall state:

Proviso, persons under sentence for felony. Application.

1. The title and nature of the suit or proceeding, in regard to which the testimony of such prisoner is desired; and

2. That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel, and verily believes. But if the application be made by the Attorney General or prosecuting attorney, it shall not be necessary to swear to such advice of counsel.

SEC. 3. Such writs may also be issued by any justice of the supreme court, judges of a circuit court, or any officer authorized to perform the duties of such circuit judge, upon the like application of a party to any suit or proceeding pending in a court of record, or pending before any officer or body who may be authorized to examine witnesses in any suit or proceeding.

By whom issued.

SEC. 4. Such writ may also be issued by any of the officers aforesaid, upon the application of a party to a suit before any justice of the peace, to bring any prisoner confined in the jail of the same county, or the county next adjoining that where such justice may reside, before such justice, to be examined as a witness.

When issued in suits before justices.

SEC. 5. Whenever any person shall be in execution on any civil process, or committed on any criminal charge, and a writ of habeas corpus shall be issued to bring the body of such prisoner before any court, officer or body to testify, or to answer for any contempt or any other matter, and it be returned upon the writ that the prisoner is charged in execution, or committed as aforesaid, he shall be remanded after having testified; and if any order of commitment be made against such prisoner, he shall be so committed to the prison from which he was taken.

Certain prisoners to be remanded.

SEC. 6. Whenever any writ of habeas corpus shall be issued pursuant to any of the foregoing provisions of this chapter, it shall be the duty of the officer to whom the same shall be delivered to obey and return such writ according to the

Liability for disobedience to writ.

command thereof, in the manner and within the time prescribed by law; and every officer who shall neglect or refuse so to do, shall be liable to the people of this State, when the writ was issued upon the application of the Attorney General, or a prosecuting attorney, and in other cases to the party upon whose application the same shall have issued, in the sum of five hundred dollars.

Habeas Corpus and Certiorari to Inquire Into Cause of Detention.

Who may sue
out writ.

SEC. 7. Every person committed, detained, confined or restrained of his liberty within this State, for any criminal or supposed criminal matter, or under any pretense whatsoever, except in the cases in the next section specified, may prosecute a writ of habeas corpus or of certiorari according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint.

Who not
entitled
to writ.

SEC. 8. The following persons shall not be entitled to prosecute such writ:

1. Persons committed or detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or shall have acquired exclusive jurisdiction by the commencement of suits in such courts;

2. Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, where the cause is plainly and specially expressed in the warrant of commitment;

3. Persons convicted, or in execution, upon legal process, civil or criminal;

4. Persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

Application.

SEC. 9. Application for such writ shall be made by petition signed either by the party for whose relief it is intended or by some person in his behalf, as follows: To the supreme court during its session; to the circuit court, or the circuit judges thereof, of the county where the prisoner is detained, to any municipal court of record, or the judge thereof, of any city where the prisoner is detained; or, if there be no such municipal court within the city, or the judge thereof be absent from the city, and the circuit judge shall be absent from the county, or for any cause be incapable of acting, or having refused to grant such writ, the application may be made to the circuit court or to the circuit judge of any adjoining county. When a writ of habeas corpus or certiorari shall be allowed and heard by a circuit judge, sitting at chambers, he shall cause a record of his action or proceedings thereon to be made on the journals of the circuit

To whom
made.

court at its then next session. And any judge who shall wilfully or corruptly refuse or neglect to consider such application or petition shall be deemed guilty of malfeasance in office.

Wilful refusal to consider application.

SEC. 10. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no such officer in such county authorized to grant such writ, or if one reside there, that he is absent, or has refused to grant such writ, or for some cause to be specially set forth, is incapable of acting; and if such proof be not produced, the application shall be denied.

Proof required on application in another county.

SEC. 11. The petition must state in substance:

Petition, what to state.

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained, and the place where; naming both parties, if their names be known, or describing them, if their names be not known;

2. That such person is not committed or detained by virtue of any process, judgment, decree or execution specified in the preceding eighth section;

3. The cause or pretense of such confinement or restraint, according to the best of the knowledge and belief of the party;

4. If the confinement be by virtue of any warrant, order or process, a copy thereof must be annexed; or it must be averred, that for some sufficient reason, a demand of such copy could not be made; or that such demand was made, and that such copy was refused;

5. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists;

6. It must specify whether the party applies for the writ of habeas corpus, or for the writ of certiorari; and

7. It must be verified by the oath of the party making the application.

SEC. 12. Any court or officer empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor is, by the provisions of this chapter, prohibited from prosecuting such writ.

When writ to be granted.

SEC. 13. Every writ of habeas corpus, issued under the provisions of this chapter, for the purpose of inquiring into the cause of any imprisonment or restraint, shall be substantially in the following form:

Form of writ of habeas corpus.

"In the name of the people of the State of Michigan:

To the sheriff of the county of (or to 'A. B.').

We command you, that you have the body of C. D. by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention, by whatso-

ever name the said C. D. shall be called or charged, before our justices of our supreme court (or 'before E. F., one of the justices of our supreme court,' or as the case may be), at, etc., on, etc., (or 'immediately after the receipt of this writ'), to do and receive what shall then and there be considered concerning the said C. D.

And have you then there this writ.

Witness, etc."

Form of writ
of certiorari.

SEC. 14. Every writ of certiorari, issued pursuant to this chapter, shall be substantially in the following form:

"In the name of the people of the State of Michigan:

To the sheriff of, etc., (or 'to A. B.').

We command you that you certify fully and at large to our justices of our supreme court (or to 'E. F., one of the justices of our supreme court,' or as the case may be), at, etc., on, etc., (or 'immediately after the receipt of this writ'), the day and cause of the imprisonment of C. D., by you detained, as is said, by whatsoever name the said C. D. shall be called or charged.

And have you then there this writ.

Witness, etc."

When writs
sufficient.

SEC. 15. Such writs of habeas corpus or certiorari shall not be disobeyed for any defect of form; but they shall be sufficient:

1. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name; or if both such names be unknown or uncertain, he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person;

2. If the person imprisoned or restrained, or who is directed to be produced, be designated by name; or if his name be uncertain or unknown, if he be described in any other way, so as to designate the person intended.

Duty of
judges to issue
writs in
certain cases.

SEC. 16. When the supreme court or any justice thereof, or judge of a circuit court shall have evidence from any judicial proceeding had before them, that any person within the county where such court or officer shall be, is illegally confined and restrained of his liberty, it shall be the duty of such court or officer to issue a writ of habeas corpus or certiorari for his relief, although no petition be presented, or application made for such writ.

Liability for
refusing writ.

SEC. 17. If any court or officer authorized by the provisions of this chapter to grant writs of habeas corpus or certiorari, to inquire into the cause of any imprisonment or detention, shall refuse to grant such writ when legally applied for, every member of such court who shall have assented to such refusal, and every such officer, shall severally be liable to the party aggrieved, in one thousand dollars damages.

Return
to writ.

SEC. 18. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally:

1. Whether he have, or have not, the party in his custody, or under his power or restraint;

2. If he have the party in his custody or power or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

3. If the party be detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return; and the original shall be produced and exhibited on the return of the writ to the court or officer before whom the same is returnable;

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place.

SEC. 19. The return must be signed by the person making the same; and except when such person shall be a sworn public officer and shall make his return in his official capacity, it shall be verified by his oath. Return to be signed, etc.

SEC. 20. If a writ of habeas corpus be issued, the person or officer on whom it shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in case of the sickness of such person as hereinafter provided. Body of prisoner, when brought up.

SEC. 21. If the person upon whom such writ of habeas corpus or certiorari shall have been duly served, shall refuse or neglect to obey the same by producing the party named in any such writ of habeas corpus, and making a full and explicit return to every such writ of habeas corpus or certiorari within the time required by this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the court or officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person. Proceedings on disobedience to writ.

SEC. 22. Such attachment shall be directed to the sheriff of any county within this State, and shall command him forthwith to apprehend such person, and bring him before such court or officer, and on being so brought, such person shall be committed to close custody in the jail of the county in which such court or officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order which may be made by such court or officer, in relation to the person for whose relief such writ shall have been issued. Attachment.

SEC. 23. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person, to be designated therein, who shall have full power to execute the same; and such sheriff upon Proceedings against sheriff.

being brought up, may be committed to the jail of any county other than his own.

Prisoner to be produced.

SEC. 24. The court or officer by whom any such attachment may be issued, may also, at the same time, or afterwards, issue a precept to the same sheriff, or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such court or officer, the party for whose benefit such writ of habeas corpus or certiorari shall have been allowed; who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed, or remanded, as such court or officer shall direct.

Power of county.

SEC. 25. In the execution of such attachment or precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county as in other cases.

Proceedings on return of writ.

SEC. 26. The court or officer before whom the party shall be brought on such writ of habeas corpus, shall, immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been for any criminal, or supposed criminal matter, or not.

When prisoner to be discharged.

SEC. 27. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such court or officer shall discharge such party from the custody or restraint under which he is held.

When prisoner to be remanded.

SEC. 28. It shall be the duty of such court or officer forthwith to remand such party, if it shall appear that he is detained in custody, either:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

3. For any contempt specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged; and

4. That the time during which such party may be legally detained has not expired.

When prisoner to be discharged in civil cases.

SEC. 29. If it appear on the return, that the prisoner is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such prisoner can only be discharged in one of the following cases:

1. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person;

2. Where, though the original imprisonment was lawful, yet, by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged;

3. Where the process is defective, in some matter of substance required by law, rendering such process void;

4. Where the process, though in proper form, has been issued in a case not allowed by law;

5. Where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

SEC. 30. But no court or officer, on the return of any habeas corpus or certiorari issued under this chapter, shall have power to inquire into the legality or justice of any process, judgment, decree or execution, specified in the preceding eighth section of this chapter; nor into the justice or propriety of any commitment for a contempt made by any court, officer or body, according to law, and charged in such commitment as hereinbefore provided.

Restriction of powers of court or officer.

SEC. 31. If it appear that the party has been legally committed for any criminal offense, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of any such offense, although the commitment be irregular, the court or officer before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable, and good bail be offered; or if not, shall forthwith remand such party.

Irregular commitments.

SEC. 32. If the party be not entitled to his discharge, and be not bailed, the court or officer shall remand him to the custody, or place him under the restraint, from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such court or officer, to the custody of such officer or person as by law is entitled thereto.

Remanding prisoner.

SEC. 33. Until judgment be given upon the return, the court or officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such court or officer shall be, or place him in such care, or under such custody, as his age and other circumstances may require.

Custody of prisoner.

SEC. 34. When it shall appear from the return of such writ, that the party named therein is in custody on any process, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, shall have had at least four day's notice of the time and place at which such writ shall have been made returnable.

Notice to parties.

SEC. 35. When it shall appear from the return, that such party is detained upon a criminal accusation, such court or officer shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the prosecuting attorney of the county within which such court or officer shall be, or to the Attorney

Notice to prosecuting attorney.

General, if there be no such prosecuting attorney within such county.

Evidence
against
return, etc.

SEC. 36. The party brought before any such court or officer, on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact, to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge; which allegations or denials shall be on oath; and thereupon such court or officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

Sickness, etc.,
of prisoner.

SEC. 37. Whenever, from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the court or officer before whom the writ is made returnable, the party in whose custody he is may state that fact in his return, verifying the same by his oath; and if such court or officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, they shall proceed to decide upon such return, and to dispose of the matter in the same manner as if a writ of certiorari had been issued, instead of a writ of habeas corpus.

When writ of
certiorari may
be issued.

SEC. 38. Whenever an application shall be made for a writ of habeas corpus, according to the provisions of this chapter, to any court or officer, if it appear to such court or officer upon the facts set forth in the petition, that the cause, matter or offense, for which the person is confined or detained, is not bailable, according to the provisions of law, instead of awarding such writ of habeas corpus, a writ of certiorari may be granted, directed to the officer or person in whose custody, or under whose control such prisoner shall be alleged to be, in like manner as if such writ of certiorari had been applied for by the prisoner.

Proceedings on
return of writ.

SEC. 39. Upon the return of such certiorari being made, the court or officer before whom such writ shall be returnable shall proceed in the same manner as upon returns to writs of habeas corpus, and shall hear the proofs of the parties in support of and against such return.

When order
made for
discharge.

SEC. 40. If it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the court or officer shall make an order that those having such person in their custody, discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such court or officer shall cease from all further proceedings thereon.

Habeas
corpus may
issue after
return of
certiorari.

SEC. 41. Notwithstanding any writ of certiorari may have been issued or returned according to the foregoing provisions, the court or officer before whom the same was returnable may issue a writ of habeas corpus, which shall, in all respects, be subject to the provisions hereinbefore contained; and if such court or officer refuse a writ of certiorari, or upon

the return thereof, refuse to discharge the person detained, if such person claim the writ of habeas corpus, he shall be entitled to the same as hereinbefore provided.

SEC. 42. If upon the return of any writ of certiorari, it shall appear that the person detained is entitled to bail, the court or officer before whom the same was returnable, shall make an order directing the sum in which such person shall be held to bail, and the court at which he shall be required to appear; and that on such bail being entered into, in conformity to such order, and the provisions of law, such prisoner be discharged.

Order for bail
on certiorari.

SEC. 43. Upon the production of such order to any circuit court commissioner of any county in which such prisoner may be, or to any judge of a court of record, he shall be authorized to take the recognizance of the person so detained, and of two sufficient sureties, in the sum so directed, with a condition for the appearance of such person at the court designated in such order; but previous to taking such recognizance, such officer shall be satisfied by the oath of persons offering themselves as sureties, that they are residents of the county, and are severally worth double the sum in which they shall be required to be bound, over and above all demand against them.

Recognizance.

Sureties.

SEC. 44. Such judge or commissioner shall file the recognizance taken by him, with the clerk of the court before which the prisoner shall be bound to appear, and shall certify on such order the compliance therewith; and the production of such order so certified, shall entitle such prisoner to be discharged from imprisonment for the cause which shall have been returned to such certiorari.

When to be
discharged.

SEC. 45. Obedience to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the court or officer granting such order, by attachment, in the same manner as is herein provided for neglect to make return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience, shall be liable to the party aggrieved in the sum of one thousand dollars damages, in addition to any special damages such party may have sustained.

Obedience to
order for
discharge,
how enforced.

SEC. 46. No sheriff or other officer shall be liable to any civil action for obeying any such order of discharge; and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such order, he may give evidence thereof under his plea of the general issue in bar of the action.

Officers
protected in
obeying order.

SEC. 47. No person who has been discharged by the order of any court or officer, upon a habeas corpus or certiorari, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause:

When
prisoner may
be recom-
mitted for
same cause.

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same

offense, by the legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offense; or

2. If, after a discharge for defect of proof, or for any material defect in the commitment, in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offense;

3. If in a civil suit the party has been discharged for any illegality in the judgment or process hereinbefore specified and is afterwards imprisoned by legal process for the same cause of action; or,

4. If in any civil suit in which process may lawfully issue against the body he shall have been discharged from commitment on original process, and shall be afterwards committed on execution in the same cause, or on original process in any other suit, after such first suit shall have been discontinued.

Liability for
re-committing
in prohibited
cases.

SEC. 48. If any person, either solely or as a member of any court, or in the execution of any order, judgment or process shall knowingly re-commit, imprison or restrain of his liberty, or cause to be recommitted, imprisoned or restrained of his liberty, for the same cause, except as provided in the last preceding section, any person so discharged, or shall knowingly aid or assist therein, he shall be liable to the party aggrieved in the sum of one thousand dollars damages, and shall also be deemed guilty of a misdemeanor.

Concealment,
etc., of
prisoner a
misdemeanor.

SEC. 49. Any one having in his custody or under his power, any person who, by the provisions of this chapter, would be entitled to a writ of habeas corpus or certiorari, to inquire into the cause of his detention, or for whose relief any such writ shall have been duly issued, who shall, with intent to elude the service of any such writ, or to avoid the effect thereof, transfer any such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Aiding in
concealment,
etc.

SEC. 50. Every person who shall knowingly aid or assist in the violation of the last preceding section, shall be deemed guilty of a misdemeanor.

Penalty.

SEC. 51. Every person convicted of any offense under either of the three last preceding sections, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

When
warrant may
issue for
prisoner.

SEC. 52. Whenever it shall appear by satisfactory proof, that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury, before he can be relieved by the issuing of a habeas corpus or certiorari, any court or officer authorized to issue such writs, may issue a warrant, reciting the facts, and directed to any sheriff, constable or other person, and commanding such officer or

person to take such prisoner, and forthwith to bring him before such court or officer, to be dealt with according to law.

SEC. 53. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offense committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person, for such offense. When warrant to order arrest of person having prisoner in custody.

SEC. 54. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the court or officer issuing the same; and thereupon the person detaining such prisoner shall make a return, in like manner, and the like proceedings shall be had, as if a writ of habeas corpus had been issued in the first instance. Execution of warrant. Proceedings.

SEC. 55. If the person having such prisoner in his custody shall be brought before such court or officer, as for a criminal offense, he shall be examined, committed, bailed or discharged, by such court or officer, in the like manner as in other criminal cases of the like nature. Examination, etc.

SEC. 56. Any officer or other person who shall refuse or neglect for six hours, to deliver a copy of any order, warrant, process or other authority, by which he shall detain any person, to any one who shall demand such copy and tender the lawful fees therefor, shall be liable to the person so detained in the sum of two hundred dollars damages. Liability of officer for refusal of copy of process, etc.

General Provisions.

SEC. 57. In all suits and proceedings under the provisions of this chapter, the prevailing party may recover his costs, to be awarded in the discretion of the court. Recovery of costs.

SEC. 58. All writs of habeas corpus or certiorari, issued by any court pursuant to the provisions of this chapter, shall be under the seal of the court to which they are awarded, and if awarded by any officer out of court, they shall be under the seal of the court to which they are made returnable; or if such writ be made returnable before some body other than a court of record, or before an officer out of court, it may be under the seal of the supreme court, or of the circuit court for the county in which it shall be issued, or of the officer issuing the same. Writs to be under seal.

SEC. 59. Every such writ may be made returnable at a day certain, or forthwith, as the case may require. Return day.

SEC. 60. Every such writ shall be indorsed with a certificate of the allowance thereof, and with the date of such allowance; which indorsement, if the writ be awarded by a court, shall be signed by the chief justice or other presiding officer of such court; if it be awarded by any officer out of court, the indorsement shall be signed by such officer. Indorsement of allowance.

Habeas corpus
in behalf
of people.

SEC. 61. Whenever a writ of habeas corpus shall be required in any action or matter civil or criminal, to which the people of this State shall be parties, the application therefor may be made by the Attorney General, or prosecuting attorney having charge of such action or matter; and whenever so issued, the court or officer allowing it, shall state in their indorsement of the allowance of such writ, that it was allowed upon such application.

Service of
writs of
habeas corpus.

SEC. 62. Writs of habeas corpus can be served only by an elector of some county within this State; and the service thereof shall not be deemed complete, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner.

Application of
last section.

SEC. 63. But the last section shall not apply, so far as provision is therein made for the payment of fees, to any case where the writ is sued out by the attorney general or a prosecuting attorney.

Mode of
service.

SEC. 64. Every writ of habeas corpus or certiorari, issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; or, if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with any under officer, or other person of proper age, having charge for the time of such prisoner.

How served
when person
conceals him-
self, etc.

SEC. 65. If the person upon whom the writ ought to be served, conceal himself, or refuse admittance to the party attempting to serve such writ, it may be served by fixing it in some conspicuous place on the outside, either of his dwelling house, or of the place where the party is confined.

Duty of
officers to
obey writs
served
on them.

SEC. 66. It shall be the duty of every sheriff, coroner, constable or marshal, upon whom a writ of habeas corpus shall be served, whether such writ be directed to him or not, upon the payment or tender of the charges allowed by law, to obey and return such writ according to the exigency thereof; and it shall be the duty of every other person upon whom such writ shall be served, having the custody of the individual for whose relief the writ shall be issued, to obey and execute such writ according to the command thereof, without requiring the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ.

Persons
to obey
certiorari.

SEC. 67. It shall, in like manner, be the duty of the person upon whom any writ of certiorari, issued pursuant to the provisions of this chapter, shall be served, upon payment or tender of the fees allowed by law for making a return to such writ, and for copying the warrant or other process to be annexed thereto, to obey and return the same according to the exigency thereof.

Fees to
persons not
officers.

SEC. 68. Every officer allowing a writ of habeas corpus directed to any person other than a sheriff, coroner, con-

stable or marshal, may, in his discretion, require as a duty to be performed, in order to render the service thereof, effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

SEC. 69. If the writ be returnable at a certain day, such return shall be made, and such prisoner produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours, and the like time shall be allowed for every additional one hundred miles.

Time for
returning
writ.

SEC. 70. The several provisions contained in this chapter shall be construed to apply, so far as they may be applicable, to every writ of habeas corpus authorized to be issued by any statute of this State.

Application of
provisions
of chapter.

SEC. 71. No prisoner detained in any county jail, awaiting or pending trial or sentence upon any criminal charge, shall be removed therefrom by any writ of habeas corpus, unless such writ shall have been issued by the supreme court, or by the circuit court of the same county, or shall be made returnable before it.

When
prisoners in
county jail
removable.

CHAPTER XXXVIII.

Of Informations in the Nature of a Quo Warranto, and in Certain Other Cases.

SECTION 1. Any information in the nature of a quo warranto may be filed in the supreme court, either in term time or vacation, by the Attorney General, against individuals, upon his own relation, or upon the relation of any private party, and without applying to such court for leave, in either of the following cases;

Informations
filed by at-
torney general,
without leave.

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State; or any office in any corporation created by the authority of this State;

2. Whenever any public officer, civil or military, shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his office;

3. When any association, or number of persons shall act as a corporation within this State, without being legally incorporated.

SEC. 2. Whenever any such information shall be filed, a summons shall be issued thereon, which, together with a copy of the information, shall be served and returned in like manner as in personal actions; and the defendant shall appear and plead to such information within fifteen days after such service.

Appearance.

- Replication.** SEC. 3. Within fifteen days after service of such plea, the plaintiff shall file a replication thereto. Such replication shall not contain any new affirmative matters, except it may deny or controvert any affirmative matter set up in such plea, and upon the filing of such replication such cause shall be at issue. No other or further pleadings shall be allowed, but the court shall have the like power of amending pleadings, as in other cases.
- No further pleadings.**
- What may be set forth in certain cases.** SEC. 4. Whenever any such information shall be filed against any person for usurping any office, the Attorney General, in addition to the other matters required to be set forth in the information, may also set forth therein the name of the person rightfully entitled to such office, with an averment of his right thereto.
- Judgment.** SEC. 5. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so entitled; or only upon the right of the defendant, as justice shall require.
- Proceedings on judgment for relator.** SEC. 6. If judgment be rendered upon the right of the person so averred to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing any official bond which may be required by law, to take upon him the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in such information, all the books and papers in his custody or within his power, belonging to such office.
- Penalty for refusal to deliver books, etc.** SEC. 7. If such defendant shall refuse or neglect to deliver over any such books or papers, pursuant to such demand, he shall be deemed guilty of a misdemeanor; and the like proceedings shall be had, and with like effect, to compel the delivery of such books and papers, as are prescribed in the next chapter.
- Suggestion of damages.** SEC. 8. If judgment be rendered upon the right of the person so averred to be entitled, in favor of such person, he may, at any time within one year after the rendering of such judgment, make and file a suggestion, that he has sustained damages to a certain amount, by reason of the usurpation by the defendant, of the office from which such defendant has been evicted, and praying judgment therefor.
- Suggestion deemed continuance.** SEC. 9. Such suggestion shall be filed, and shall be deemed a continuation of the cause; it shall be served on the defendant, or his attorney, with a notice to plead thereto, in the same manner as upon filing a declaration in personal actions.
- Plea to suggestion.** SEC. 10. The defendant may plead the general issue to such suggestion, which shall be, in substance, the same as in personal actions; and on trial of any such issue, the plaintiff therein shall be entitled to recover the damages which he may have sustained by reason of the usurpation.
- Determination of issues.** SEC. 11. All issues of fact or of law, that shall be joined between the parties, shall be tried and determined in the supreme court, or in the circuit court of such county as the supreme court may by special rule direct, and execution may

issue on any judgment recovered on such trial as in other cases.

SEC. 12. If no issue of fact be joined upon such suggestion, or if judgment be rendered against the defendant by default, or otherwise, an order may be entered that such damages be assessed at a circuit court, to be held in any county of this State as in other cases. Assessment of damages on default, etc.

SEC. 13. An information in the nature of a quo warranto may also be filed by the Attorney General, upon his own relation, or upon the relation of any private party, on leave granted, against any corporate body, whenever such corporation shall: Information against corporations.

1. Offend against any of the provisions of the act or acts, creating, offering, or renewing such corporation; or

2. Violate the provisions of any law, by which such corporation shall have forfeited its charter by misuser; or

3. Whenever it shall have forfeited its privileges and franchises by non-user, or

4. Whenever it shall have done or omitted any acts which amount to a surrender of its corporate rights, privileges and franchises; or

5. Whenever it shall exercise any franchise or privilege not conferred upon it by law;

and it shall be the duty of the Attorney General, whenever he shall have good reason to believe that the same can be established by proof, to file such information in every case of public interest; and also, in every other case in which satisfactory security shall be given to indemnify the people of this State against all costs and expenses to be incurred thereby.

SEC. 14. Leave to file such information may be granted by the supreme court in term time, or by any justice thereof, but by no other officer, upon the application of the Attorney General in vacation, and such court or justice may, in their discretion, direct notice of such application to be given to such corporation or its officers, previous to granting such leave, and may hear such corporation in opposition thereto. Who to grant leave.

SEC. 15. Upon such leave being granted and endorsed upon the information, under the hand of the clerk of the court, or of the justice granting the same the Attorney General may forthwith file the same, and thereupon may issue a writ of summons against such corporation, commanding the sheriff to summon such corporation to appear in the said court, and to answer the said information. Writ of summons.

SEC. 16. But when such corporation shall appear by counsel pursuant to the notice above authorized to be given, and shall be heard in opposition to granting such leave, the court or justice granting leave may also direct a rule to be entered, requiring the defendants to appear and plead to such information within fifteen days after service of a copy thereof, and notice of said rule; and in such case it shall not be necessary to issue a writ of summons. When summons not necessary.

Proceedings
upon return
not served.

SEC. 17. Whenever any such writ shall be returned not served, by reason of the defendants, or the officers of the defendants not being found, the like proceedings shall thereupon be had as in the case of absent, concealed and non-resident defendants in chancery cases, and default may be filed or entered as in other cases of service by publication.

Information
against
several
persons.

SEC. 18. When several persons claim to be entitled to the same office or franchise, one information may be filed against all such persons in order to try their respective rights to such office or franchise.

Judgment on
conviction.

SEC. 19. Whenever any defendant, whether a natural person or a corporation, against whom an information in the nature of a quo warranto shall have been exhibited, shall be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise or privilege; and also, that the Attorney General, or the relator, if there be one, recover his costs against such defendant.

Court may
impose fine,
etc.

SEC. 20. The court may also, in its discretion, impose a fine upon any such person or corporation against whom such judgment shall be rendered, not exceeding two thousand dollars; which fine, when collected, shall be paid to the State Treasurer, and shall by him be distributed and paid to the several county treasurers to the credit of the several library funds, in the same proportions that the income of the primary school fund was apportioned to the several counties, at the then last apportionment of such school moneys.

Judgment
against
corporation.

SEC. 21. Whenever it shall be found or adjudged that any corporation against which an information in the nature of a quo warranto shall have been filed, has, by any misuser, non-user, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that the said corporation be dissolved; or, in lieu of such judgment (except in case of such surrender), the court may impose a fine not exceeding ten thousand dollars upon said corporation; but such fine shall not prevent further prosecution for any continuance or repetition of the conduct complained of, to be had on like leave of the court first had and obtained.

Fine imposed
in lieu.

Collection
of costs.

SEC. 22. If judgment be rendered upon any such information against any corporation, or against any persons claiming to be a corporation, the court may cause the costs therein to be collected, by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of any such corporation.

Powers of
equity courts.

SEC. 23. Whenever any such judgment shall be rendered, any court having equity jurisdiction shall have the same powers to restrain the corporation against which it is rendered; to appoint a receiver of its property and effects; and to take an account and make distribution thereof among its credi-

tors, as in case of the voluntary dissolution of a corporation and it shall be the duty of the Attorney General, immediately after the rendering of any such judgment, to institute proceedings for that purpose in said court.

SEC. 24. Whenever any such judgment shall be rendered against a corporation, a copy of the record of such judgment shall be forthwith filed in the office of the Secretary of State; and such Secretary shall forthwith cause notice of the substance and effect of such recovery to be published for four successive weeks in some newspaper printed at the seat of government, and in a newspaper printed in the county where the principal office or place of business of such corporation shall be, if a newspaper be there printed.

Record of judgment to be filed, etc.

SEC. 25. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the people of this State, or to any officers, for their use, an information for the recovery of such property alleging the grounds of such forfeiture, may be filed by the Attorney General in the circuit court; upon which the like proceedings and judgment shall be had, if the information be to recover personal property, as in personal actions, and if to recover real property, as in actions of ejectment.

Information for forfeited property.

SEC. 26. An information in the nature of a quo warranto may be filed in the several circuit courts of this State, as well as in the supreme court, and all of the provisions of this chapter shall be applicable to such proceedings in such circuit courts, and all powers conferred upon the several judges of the supreme court by this chapter are hereby conferred upon the judges of the several circuit courts respectively: *Provided*, That no such information shall be filed and allowed by any such circuit court against any judge of the supreme court or any State officer.

Jurisdiction of circuit court.

Proviso, Informations not allowed.

SEC. 27. Informations under this chapter may be filed by the prosecuting attorney of the proper county, on his own relation, or that of any citizen of the county, without leave of the court, or, by any citizen of the county by special leave of the court or a judge thereof.

By whom filed.

SEC. 28. A petition may be filed in the circuit court of any county of this State whenever it shall be made to appear that material fraud or error has been committed at any election in such county at which there shall have been submitted any constitutional amendment, question, or proposition to the electors of the State or any county, township or municipality thereof.

Informations for election frauds.

SEC. 29. Such petition shall be filed within thirty days after such election by the Attorney General or the prosecuting attorney of the proper county on his own relation, or on the relation of any citizen of said county without leave of the court, or by any citizen of the county by special leave of the court or a judge thereof. Such petition shall be filed against the municipality wherein such fraud or error is alleged to have been committed.

When and by whom filed.

Proceedings. SEC. 30. After the filing of such petition the procedure shall conform as near as may be to that provided by law for informations in the nature of quo warranto.

CHAPTER XXXIX.

Compelling Delivery of Official Books and Papers.

Delivery of books, etc., to successor. SECTION 1. Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office, and every person violating this provision shall be deemed guilty of a misdemeanor.

Complaint. SEC. 2. If any person shall refuse or neglect to deliver over to his successor, any books or papers, as required in the preceding section, such successor may make complaint thereof to any judge of a court of record, or to any circuit court commissioner for the county where the person so refusing shall reside.

Order to show cause. SEC. 3. If such officer be satisfied by the oath of the plaintiff and such other testimony as may be offered, that any such books or papers are withheld, he shall grant an order, directing the person so refusing to show cause before him, within a reasonable time, why he should not be compelled to deliver the same.

Hearing. SEC. 4. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such officer shall proceed to inquire into the matters set forth in the complaint.

Proof of delivery. SEC. 5. If the person charged with withholding such books and papers, shall make proof satisfactory to such officer, that he has truly delivered over to his successor all such books and papers in his custody, or appertaining to his office, within his knowledge, all further proceedings before such officer shall cease, and the person complained against shall be discharged.

Commitment until delivered. SEC. 6. If the person complained against shall not make such satisfactory proof, and it shall appear that any such books or papers are withheld, the officer before whom such proceedings shall be had shall, by warrant, commit the person so withholding to the jail of the county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

Search warrant. SEC. 7. In the case stated in the last section, if required by the plaintiff, such officer shall also issue his warrant directed to the sheriff or any constable of the county, commanding them, in the day time, to search such places as shall be designated in such warrant, for such books and papers as belonged to the officer so removed, or whose term of office expired, in his official capacity, and which appertained to such

office, and seize and bring them before the officer issuing such warrant.

SEC. 8. Upon any books or papers being brought before such officer by virtue of such warrant, he shall inquire and examine whether the same appertain to the office, from which the officer so refusing to deliver was removed, or of which the term expired, and if the same pertain to such office, he shall cause them to be delivered to the plaintiff. Proceedings on return.

SEC. 9. If any person appointed or elected to any office shall die, or his office shall in any way become vacant, and any books or papers belonging or appertaining to such office shall come to the hands of any person, the successor in any such office may, in like manner as hereinbefore prescribed, demand such books or papers from the person having the same in his possession; and if withheld, an order may be obtained, and the person charged may in like manner make satisfactory proof of the delivery of all such books and papers that ever came to his possession; and in case of omission to make such satisfactory proof, and to deliver up the books and papers so demanded, such person may be committed to jail, and a search warrant may be issued, and the property seized may be delivered to the plaintiff, as hereinbefore prescribed. Death or vacancy.

CHAPTER XL.

The Voluntary Dissolution of Corporations and Winding up of Corporations Whose Terms Have Expired.

Of the Voluntary Dissolution of Corporations.

SECTION 1. Whenever the directors, trustees or other officers having the management of the concerns of any corporation, or the majority of them, shall discover that the stock, property and effects of such corporation have been so far reduced by losses or otherwise, that it will not be able to pay all just demands to which it may be liable, or to afford a reasonable security to those who may deal with such corporation, or whenever such directors, trustees or officers, or a majority of them, shall, for any reason, deem it beneficial to the stockholders that such corporation should be dissolved, they may apply by petition to the court of chancery for the county wherein said corporation is located for a decree dissolving such corporation, pursuant to the provisions of this chapter: *Provided*, That the provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation; to any incorporated academy or select school not organized for pecuniary profit; nor to the proprietors of any burying ground incorporated under the laws of this State. Who may apply for dissolution.

SEC. 2. Every such application shall contain a statement of the reasons which induce the applicants to desire a disso- Application.

Statements attached.	lution of the corporation and there shall be annexed thereto:
	1. An inventory of all the estate, both real and personal, in law and equity, of such corporation, and of all the books, vouchers and securities relating thereto;
	2. An account of the capital stock of such corporation, specifying the names of the stockholders, their residence when known, the number of shares belonging to each, the amount paid in upon such shares respectively, and the amount still due thereon;
	3. A statement of all incumbrances on the property of such corporation;
	4. An account of all the creditors of such corporation and of all engagements entered into by such corporation, which may not have been fully satisfied and canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known, the fact to be so stated; the sum owing to each creditor; the nature of each debt or demand; and the true cause and consideration of such indebtedness in each case;
	5. An affidavit of the applicants, that the facts stated in such application, accounts, inventories and statements, are full and true, so far as the applicants respectively know, or have the means of knowing.
Order to show cause.	SEC. 3. Upon such application being filed, an order shall be entered requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved, before the court or some circuit court commissioner to be named in such order at some time and place to be therein specified not less than thirty days from the date thereof; and notice of the contents of such order shall be served by mail upon all creditors and stockholders at least thirty days before the date of such hearing, and shall be published once in each week for three weeks successively in such newspaper as the court may direct.
Notice.	
Hearing.	SEC. 4. On the day appointed in such order such court or circuit court commissioner shall proceed to hear the allegations and proofs of the parties and shall take testimony in relation thereto, and in case of a circuit court commissioner shall, with all convenient speed, report the same to the court with a statement of the property, effects, debts, credits, engagements and conditions of such corporation. Upon said hearing before the court or upon the coming in of the report of the circuit court commissioner, if it shall appear to the court that such corporation is insolvent or that for any reason a dissolution thereof will be beneficial to the stockholders and not injurious to the public interest, a decree shall be entered dissolving such corporation and appointing one or more receivers of its estate and effects; and such corporation shall thereupon be dissolved and shall cease: <i>Provided, however,</i> That pending the hearing on said application the court may, in its discretion, appoint a temporary receiver or receivers with such powers as the court may prescribe.
Decree of dissolution.	
Proviso, appointment of receiver, etc.	

SEC. 5. Any corporation or person claiming to be aggrieved by any decree or final order of any circuit court in chancery in any proceeding mentioned in this chapter, may appeal therefrom to the supreme court as in other cases.

Appeal.

SEC. 6. Upon giving bond and qualifying, as the court may direct, such permanent receiver shall be vested with all the estate, real and personal, of such corporation and shall be trustee thereof for the benefit of its creditors and stockholders, and shall have all the powers, authority and remedies of an assignee for an insolvent debtor, and also the power to continue the business of such corporation for such period not exceeding one year as the court shall permit; and so far as they may be applicable, shall be subject to all the duties and obligations of such an assignee, except where other provisions are herein made. The provisions of law regulating common law assignments with reference to sales of property, notice to creditors to prove claims, the proving, contesting and allowing of claims, the making of set-offs, the powers of the court in chancery or judge thereof, the making and filing of accounts, the closing of the estate, the distribution of dividends and the compensation of the receiver, shall apply and be followed except that (a) stockholders as well as creditors shall be given notice of claims filed and may with like effect request that any claim be contested; (b) stockholders shall be given notice of such other matters and in such manner as the court may require; (c) in distributing dividends any surplus remaining after payment of expenses and after creditors are paid in full shall be distributed among the stockholders according to their respective rights as determined by the court.

Bond and qualification.

Powers of receiver.

Duties.

Provisions of law applicable.

Notices to stockholders.

Distribution.

SEC. 7. All sales, assignments, transfers, mortgages and conveyances of any part of the assets of such corporation made after the filing of such application for dissolution, in payment of or as security for any existing or prior debt, and all judgments confessed by such corporation after that time, and all subsequent levies or garnishments shall be absolutely void as against the receiver who may be thereafter appointed.

Sales, etc., after application to be void.

SEC. 8. Suits may be brought and carried on by the receiver in his own name and may be continued by his successor or co-receiver. Suits commenced by or against the corporation before the filing of said application shall not abate thereby nor by the decree of dissolution but may be prosecuted or defended by the receiver. The court in which any such action is pending may on motion make any necessary order of substitution or otherwise in the premises.

Suits by receiver in own name.

Of the Winding up of Mining and Manufacturing Corporations Whose Charters Have Expired.

SEC. 9. Any corporation heretofore or hereafter to be organized under the laws of this State for the purpose of carrying on the business of mining, smelting or manufactur-

How may be wound up.

Proviso, re-
organization,
etc.

ing, under general acts of the Legislature authorizing such organization, or under any special act of the Legislature organizing such corporation, whose term of existence as fixed by its articles of association or organization or by such special act, and whose further term for winding up its business allowed by the laws of this State has expired or shall expire (no other valid proceedings having been completed, to wind up its corporate affairs), may be wound up and its assets disposed of and distributed pursuant to the provisions of sections forty to forty-six inclusive of this chapter: *Provided*, That nothing in this chapter contained shall be construed to prevent the reorganization or the extension of the renewal of the corporate term on the part of corporations authorized by law so to act, nor to affect or impair the organization rights of property of any de facto corporation actively carrying on its proper business.

Stockholder
may file bill.

SEC. 10. Any stockholder (whether his title to the stock be legal, equitable, absolute or in trust) in such corporation, or any creditor of such corporation whose demand is in full force and is not barred by any statute of limitations, may file a verified bill in the circuit court in chancery of any county of this State in which any of the real or personal property of such corporation may be situated, for the purpose of winding up the affairs of such corporation and disposing of and distributing its property among the persons entitled thereto, which bill shall set forth in substance:

What to
set forth.

1. The nature of plaintiff's interest in the property, the date of organization of the corporation or the date of approval of the special act under which it may have been organized, with the title of such act, as the case may be, its term of corporate existence and a copy of its articles of association, if any, if the same be on file or of record in the office of the Secretary of State or county clerk, or if such corporation be organized by special act, then a copy of such special act;

2. A statement of the assets, real and personal, belonging either in law or equity to such corporation, so far as is known to plaintiff;

3. A statement of the amount of capital stock and of the amount thereof paid in, if known, together with the names of stockholders, their residence and the number of shares owned by them as shown in the last report of the officers of the corporation on file in the office of the Secretary of State or county clerk, if any such report has been filed and can be found therein, and if there be no such report on file, then the foregoing facts shall be set forth as, and in so far as they may appear, by the articles of association or organization on file in the office of the Secretary of State or county clerk, if any such there be, or by the special act of the Legislature organizing such corporation: *Provided*, That if the stock books of the corporation are accessible to plaintiff, he shall also state the names of the stockholders, their place of residence, and the number of shares held by each, in so far as in such books they appear;

Proviso,
when to state
names of
stockholders.

4. A statement of all incumbrances upon any of the property of the corporation, together with all adverse claims upon the same, with the names and residence of the persons holding or asserting the same, so far as known to plaintiff;

5. A statement of the debts of the corporation, if any, the names and residence of all its creditors, the nature of their demands and the consideration of any such indebtedness, so far as known to plaintiff;

6. If the creditors or owners of the stock of such corporation, or any of them, are unknown to the plaintiff, the bill shall set forth that fact, and the bill shall aver that it is filed, not only on behalf of the plaintiff, but also of all other persons interested in the property of the corporation, whether as stockholders, creditors or otherwise, who may choose to come in as parties plaintiff and share the expense of the proceedings;

7. Such bill shall pray that the affairs of the corporation be wound up and its assets disposed of and distributed, and may pray for the appointment of a receiver of its property, and may contain any other appropriate averments of fact and pray for any other appropriate relief.

SEC. 11. Such corporation shall be made a party defendant by its corporate name; all persons claiming any incumbrances upon the property thereof, may be parties defendant. It shall not be necessary to make any stockholder or creditor of such corporation, a party defendant. Parties defendant.

SEC. 12. Process for appearance may be issued and served, and orders of publication in proper cases made and published in the same manner, and with like effect as in other chancery cases. The subsequent proceedings in such cause shall be the same so far as applicable, as are provided for in the case of a voluntary dissolution of corporations. Process for appearance.

SEC. 13. The court, or the judge thereof, may at any time, on proper application of plaintiff, and notice to the proper parties, to be given personally or by publication in such manner as the court or judge thereof may order, appoint a receiver of the property of the corporation. Appointment of receiver.

SEC. 14. Such receiver shall be vested with all the estate, real and personal, of such corporation, and shall, under the direction of the court, proceed to wind up the affairs of such corporation, and distribute its assets among its creditors and stockholders, in the same manner as near as may be, as is provided by law in the case of voluntary dissolution of corporations. Powers and duties of receiver.

SEC. 15. In case the claim of the plaintiff to be a stockholder or creditor of such corporation shall fail or be disproved, the proceeding may go on at the desire and for the benefit of any other stockholder or stockholders, creditor or creditors, who may have appeared in such proceeding, and whose right to continue the same shall be made to appear. In case plaintiff fail, proceeding to go on for another stockholder.

CHAPTER XLI.

Proceedings Against Corporations in Chancery.

Injunctions
against cor-
porations.

SECTION 1. Upon a bill being filed under the direction of the Attorney General, in any court having equity jurisdiction, the court shall have power to restrain by injunction, any corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by the charter of such corporation; and in the same manner to restrain any individuals from exercising any corporate rights, privileges or franchises, not granted to them by any law of this State.

Issue and
continuance of
injunction.

SEC. 2. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendants complained of have usurped, exercised or claimed, any franchise, privilege, liberty or corporate right not granted to them, and after the coming in of the answer, such injunction may be continued until judgment at law shall have been had.

Jurisdiction of
courts over
officers.

SEC. 3. The circuit court in chancery within the proper county shall have jurisdiction over directors, managers, trustees, and other officers of corporations, and over any persons who may have held such offices, in any corporation, provided that proceedings are commenced within one year after they have ceased to be such directors, managers, trustees, and other officers:

1. To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge;

2. To decree and compel payment by them to the corporation whom they represent, and to its creditors, of all sums of money and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted by any violation of their duties as such directors, managers, trustees, or other officers;

3. To suspend any such trustee or officer from exercising his office whenever it shall appear that he has abused his trust;

4. To remove any such trustee or officer from his office upon proof or conviction of gross misconduct;

5. To direct new elections to be held by the body or board duly authorized for that purpose, to supply any vacancy created by such removal;

6. In case there be no such body or board, or all the members of such board be removed, then to report the same to the Governor, who shall be authorized, with the consent of the senate, to fill such vacancies;

7. To set aside all alienations of property made by the trustees or other officers of any corporation contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporations, in cases where the

person receiving such alienation knew the purpose for which the same was made; and

8. To restrain and prevent any such alienation in cases where it may be threatened or there may be good reason to apprehend that it is intended to be made.

SEC. 4. When any of the visitatorial powers enumerated in the preceding section, over any corporation, are or shall be vested, by statute, in any corporate body or public officer, the provisions of that section shall not be construed to divest or impair the powers so vested. Construction of last section.

SEC. 5. The jurisdiction conferred in the third section of this chapter shall be exercised as in ordinary cases on bill or petition, as the case may require, or as the court may direct, at the instance of the Attorney General, prosecuting in behalf of the people of this State, or at the instance of any creditor of such corporation, or at the instance of any director, trustee, or other officer of such corporation having a general superintendence of its concerns, or by any stockholder of such corporation. How jurisdiction exercised.

SEC. 6. Whenever a judgment at law, or a decree in chancery, shall be obtained against any corporation, incorporated under the laws of this State, and an execution issued thereon shall have been returned unsatisfied in part or in whole, upon the petition of the person obtaining such judgment or decree, or his representatives, the circuit court within the proper county may sequester the stock, property, things in action and effects of such corporation, and may appoint a receiver of the same. Sequestration of property. Receiver.

SEC. 7. Upon a final decree on any such petition, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among the creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in the case of a voluntary dissolution of a corporation. Distribution upon decree.

SEC. 8. Whenever any incorporated company shall have remained insolvent for one whole year, or for one year shall have neglected or refused to pay and discharge its notes, or other evidence of debt, it shall be deemed to have surrendered the rights, privileges, and franchises granted by any act of incorporation, or acquired under the laws of this State, and shall be adjudged to be dissolved. Surrender of corporate rights.

SEC. 9. Whenever any corporation having banking powers, or having the power to make loans, on pledges or deposits, or authorized by law to make insurances, shall become insolvent or unable to pay its debts, or shall neglect or refuse to pay its notes or evidences of debt on demand, or shall have violated any of the provisions of its act or acts of incorporation, or of any other act binding on such corporation, any court having equity jurisdiction may, by injunction, restrain such corporation and its officers, from exercising any of its corporate rights, privileges or franchises, and from Proceedings against certain insolvent corporations

collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

Who may
apply for
injunction.

SEC. 10. Such injunction may be issued on the application of the Attorney General in behalf of the people of this State, or on the application of any creditor or stockholder of such corporation, upon bill or petition, filed for that purpose, and upon due proof of any of the facts in the last section required, to authorize the issuing of the same. Whenever such injunction shall issue against any bank, for any violation of its charter, on the application of any creditor, the court shall proceed to final decree in such case, and adjudge a forfeiture if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation, and in all such cases the Attorney General, under the direction of the Governor or any creditor, shall have the right to appear and prosecute such suit, and such suit shall not be discontinued if either of them so appear and prosecute such suit to final judgment.

Appointment
of receivers.

SEC. 11. Upon such application being made, and in any stage of the proceedings thereupon, the court may appoint one or more receivers, to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due, and the property that may belong to such corporation, who shall, in all respects, be subject to the control of the court.

Powers and
duties of
receivers.

SEC. 12. Such receivers shall possess all the powers and authority conferred, and be subject to all the obligations and duties imposed upon receivers appointed in case of the voluntary dissolution of a corporation.

When
directors, etc.,
made parties.

SEC. 13. If such application be made by a creditor of any corporation, whose directors or stockholders are made liable by law for the payment of such debt in any event or contingency, such directors or stockholders may be made parties to the bill or petition, either on the filing thereof, or in any subsequent stage of the proceedings, whenever it shall become necessary to enforce such liability.

Directors, etc.,
made parties
after decree.

SEC. 14. If any creditor of a corporation desires to make such directors or stockholders parties to the suit, after a decree therein against the corporation, he may do so, on filing a supplemental bill against them, founded upon such decree, and if such decree was rendered in a proceeding instituted by the Attorney General, such creditor may, on his application, be made plaintiff therein, with or instead of the Attorney General, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such suit.

Bill against
stockholders,
etc.

SEC. 15. Whenever any creditor of a corporation shall seek to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his bill for

that purpose in any court having chancery jurisdiction, which shall possess jurisdiction to enforce such liability.

SEC. 16. The court shall proceed thereon as in other cases, and when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers, who shall possess all the powers conferred, and be subject to all the obligations imposed on receivers in case of the voluntary dissolution of a corporation. Proceedings thereon.

SEC. 17. But if, on the coming in of the answer, or upon the taking of any such account, it shall appear that such corporation is insolvent, and that it has no property or effects to satisfy such creditor, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same, by its decree, as in other cases. Proceedings in case of insolvency.

SEC. 18. Upon a final decree being made upon any such application to restrain a corporation, or upon any such bill filed against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its creditors, in the order and in the proportions prescribed in the case of a voluntary dissolution of a corporation. Distribution of property.

SEC. 19. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, shall have been made parties to a suit in which a decree shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the company. Compelling stockholders to pay on stock.

SEC. 20. If the debts of the company shall remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to decree the amount payable by each, and enforce such decree as in other cases. Enforcing payment by directors, etc.

SEC. 21. Upon any application to the court having jurisdiction, in any of the cases provided in this chapter, such court may compel such corporation to discover any stock, property, things in action or effects alleged to belong, or to have belonged to it, the transfer and disposition thereof, and the consideration, and all the circumstances of such disposition. Discovery by corporation.

SEC. 22. Every officer, agent or stockholder of any corporation, against which proceedings shall be instituted, according to the provisions of this chapter, and every person to whom it shall be alleged that any transfer of any property or effects of such corporation has been made, or in whose possession or control any such property or effects shall be alleged to be, may be compelled, in the discretion of the court, to answer a bill filed to obtain any discovery in the preceding section specified, notwithstanding such answer may expose the Discovery by officers, etc.

corporation of which he is a member to a forfeiture of its corporate rights, or any of them.

Answers, how
Compelled.

SEC. 23. The answers of the officers and agents of any corporation, shall be evidence against the corporation, in the same manner, and to the same extent as if such answers had been given upon an examination of such officers or agents, as witnesses in the cause, and such officers or agents may subsequently be examined as witnesses by either party, under the order of the court, but no such answer shall be compelled, unless by special order of the court.

Answer, etc.,
not to be used
on indictment.

SEC. 24. Neither the answer of any such officer or agent, nor his testimony upon any such subsequent examination, shall be used as evidence upon any indictment, or other criminal prosecution or proceeding against him.

Staying
proceedings
at law.

SEC. 25. Whenever any bill shall be filed, or any application made against any corporation, its directors or other superintending officers, or its stockholders, according to the provisions of this chapter, the court may, by injunction, on the application of either party, and at any stage of the proceedings, restrain all proceedings at law, by any creditor against the defendants in such suit; and whenever it shall appear necessary or proper, may order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the suit, within a reasonable time, not less than six months from the first publication of such order, and in default thereof, to be precluded from all benefit of the decree which shall be made in such suit, and from any distribution which shall be made under such decree.

Notice to
creditors.

Exception
of certain
corporations.

SEC. 26. The provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation, or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this State.

CHAPTER XLII.

Assignments for the Benefit of Creditors.

When
assignments
to be void.

SECTION 1. All assignments commonly called common law assignments for the benefit of creditors shall be void unless the same shall be without preferences as between such creditors and shall be of all the property of the assignor not exempt from execution, and the instrument of assignment or a duplicate thereof, an inventory of the assigned property, a list of creditors of the assignor, and a bond for the faithful performance of the trust by the assignee shall be filed in the office of the clerk of the circuit court where said assignor resides, or if he is not a resident of this State, then of the county where the assigned property is principally located, within ten days after the making thereof: *Provided*, That no such assignment shall be effectual to convey the title to the

Bond.

Proviso, when
effectual.

property to the assignee until such bond shall be filed with and approved by said clerk: And *Provided further*, That no attachment or execution levied upon any assigned property of such assignor after such assignment and before the expiration of the time provided herein for filing such bond, shall be valid or create any lien upon such property. Such assignment shall be acknowledged before some officer authorized to take acknowledgements. Such inventory shall be a detailed statement as near as may be of the general description, value and location of all the property and rights assigned, and in cases of persons engaged in business, specifying the original cost of any goods, wares, merchandise, fixtures and furniture. Such list of creditors shall, as far as the assignor can state the same, contain the name and postoffice address of each creditor, the amount due as near as may be over and above all defenses, the actual consideration for the debt, when contracted, and all securities and the value thereof held by each creditor. Such inventory and list of creditors shall be sworn by the assignor to be full, true and correct to the best of his knowledge, information and belief. Such bond shall be to the assignor for the joint and several use and benefit of himself and each, any and all of the creditors of such assignor in a penal sum at least double the value of the assigned property as shown by such inventory, and conditioned for the prompt and faithful administration of the trust by the assignee and shall be signed by the assignee and sufficient surety or sureties, who shall, under oath indorsed on said bond, testify that they are worth in the aggregate over and above all exemptions, incumbrances and debts, the penal sum of said bond.

Further
proviso,
attachment,
etc.

Acknowledg-
ment.

Verification of
inventory
and list of
creditors

Penal sum
of bond.

SEC. 2. Such assignment shall be deemed to convey to the assignee all property of the assignor not exempt from execution, and all rights legal or equitable of said assignor. The assignee shall also be trustee of the estate of the debtor for the benefit of his creditors and may recover all property or rights or equities in property which might be recovered by any creditor. When more than one assignee is appointed, the debts and property of the assignor may be collected and received by one of them and when there are more than two assignees, every power and authority of the whole may be exercised by any two of them. The survivor or survivors of any assignees shall have all their powers and rights and all property in the hands of any assignee at the time of his death, removal or incapacity, shall be delivered to the remaining assignee or assignees if there be any, or to the successor of the one so dying, removed or incapacitated, who may demand and sue for the same.

What to
convey.

Powers of
assignees.

SEC. 3. Among other things the said assignee shall have power to:

Specific
powers of
assignee.

1. Sue in his own name as such assignee and recover all the estate, debts and things in action belonging or due to such assignor in the manner and with like effect as he might

or could have done if an assignment had not been made, but no suit in chancery shall be brought by the assignee involving less than five hundred dollars without the consent of the court.

2. Take into his hands all the estate of such assignor whether delivered to him or afterwards discovered, and all books, vouchers and papers relating to the same;

3. From time to time sell the assets at public auction or at private sale, as herein provided;

4. Redeem all mortgages and conditional contracts or other incumbrances and pledges of personal property; or sell such property subject to such incumbrances, contracts or pledges;

5. Settle all matters and accounts between such assignor and his debtors and creditors and examine, on oath to be administered by him, any person touching such matters and accounts;

6. Compound with any person indebted to such assignor, under order of said court or judge;

7. Prosecute or defend suits pending in favor of or against said assignor.

*Appraisement
of property.*

SEC. 4. As soon as practicable after receiving said assignment, the assignees shall cause an appraisement of such property to be made by two disinterested competent persons under oath, and filed with the clerk of the court. Within ten days after completion of the appraisal, the assignee shall apply to the circuit court in chancery or the judge thereof for direction as to the disposition of the assets. Such application shall be by petition, showing what, in the opinion of the assignee, is the most advantageous method of effecting such disposition. Notice of such application of not less than ten days shall be given by mail to all creditors known to the assignee, and proof thereof filed with the clerk prior to such hearing. The assigned property and assets shall be sold at public or at private sale, in one parcel or separately, as said court or judge may direct. As least fourteen days' notice of the time and place of any public sale shall be given by publishing the same in a newspaper printed and circulated in the county where the sale shall be made, if there be one, and if not then in such paper as the court shall direct, once in each week for at least two successive weeks prior to said sale and by mailing a copy of the same to all creditors. All sales of personal property shall be for cash, but on sales of real property credit may be given for not exceeding one year and for not more than three-fourths of the purchase money, which shall be secured by mortgage on the property sold.

*Sale of
property.*

Notice

Terms of sale

*Notice to
creditors.*

SEC. 5. Within ten days after receiving such trust, the assignee shall give notice to all creditors personally or by mail (accompanied by blank proof of claim) requiring them to prove their claims within ninety days thereafter by a proof of claim to be filed with the assignee, or in default thereof, that the assignee will proceed to

distribute the estate as soon as practicable without reference to claims not proved when dividends are paid. It shall not be obligatory upon the assignee to receive proofs of claim after the expiration of said ninety day period except upon order of the court, and the court shall not allow any claim by any creditor so notified to be received after the expiration of one year from the date on which the assignment is filed. Within ten days after the expiration of said ninety day period the assignee shall serve personally or by mail upon each of the creditors a complete list of all creditors who have filed proof of claim giving in each instance the name, postoffice address and amount claimed. After the expiration of twenty days from the time when said notice is given, the assignee shall file all proofs of claim with the clerk of the court accompanied by any notices of contest which he may decide to make.

Limitation of proof of claims.

List of claims proved.

SEC. 6. Each proof of claim must be sworn to and must state the actual amount unpaid and owing, the actual consideration thereof, when the same was contracted, when the same has become or will become due, whether any or what securities are held therefor, whether any and what payments have been made thereon, that the sum claimed is justly owing from the assignor to the claimant, and that the claimant has not, nor has any other person for his use, received any security or satisfaction whatever other than that set forth in such proof. When the claim is founded upon an account an itemized statement thereof shall be given and when the claim is founded upon any note or similar instrument, a copy thereof shall be attached and the production of the original may be required by the assignee.

Proofs of claims to be sworn, etc.

SEC. 7. The assignee may contest any claim. Any creditor desirous of having a claim contested may by writing request the assignee to do so and the service of any such request shall operate to stay the payment of any dividend upon such claim until the further order of the court; or any creditor may petition the court for an order requiring the assignee to contest any claim. The contest of any claim shall be instituted by serving, personally or by mail, a notice upon the claimant stating that such claim will be contested and for what reasons. Upon said proof of claim and proof of such service being filed with the clerk of said court, he shall enter such contest upon the law side of the court as a cause in the name of such creditor against such assignor. The circuit court of such county shall proceed with the trial of said cause in the same manner as in other suits at law and shall have power to cause further pleadings to be filed and to allow new or amended ones as may be deemed necessary. The costs or any part thereof may be awarded to either party as the court may deem just and right under the circumstances. Whenever costs are awarded to the creditor, they shall be taxed and shall be paid by the assignee out of the assets if he has sufficient for that purpose.

Assignee may contest claims.

Contest, how instituted.

Trial.

Costs.

Set off of
mutual debts,
etc.

SEC. 8. In all cases of mutual debts or mutual credits between the estate of an assignor and a creditor, the account shall be stated and one debt shall be set off against the other and the balance only shall be allowed or paid. A set-off or counter claim shall not be allowed in favor of any debtor of the assignor which is not provable against his estate, or which was purchased by or transferred to such debtor after the filing of the assignment or prior to the filing thereof with a view to such use and with knowledge or notice that such assignor was insolvent.

Circuit court
in chancery
to have
supervisory
power, etc.

SEC. 9. The circuit court in chancery for said county shall have supervisory power of all matters, questions and disputes arising under such assignment, (except as otherwise provided in this chapter) and may on the application of the assignee or any person interested, make all necessary and proper orders for the management and disposition of the assigned property, the allowance of claims, the re-examination thereof, the distribution of the assets and avails, the recovery of all property claimed by third persons, the prevention of any fraudulent transfer or change in the property or effects of the assignor or the allowance or payment of any unjust or fraudulent claim, the furnishing from time to time of new bonds or sureties who shall justify as herein provided, the removal of any assignee for cause and the appointment of a successor to any assignee who shall die, resign or be removed; and the judge of said court may, on the application of the assignee or any creditor require the assignor or any other person upon reasonable notice to appear before him and submit to examination under oath upon all matters relating to the disposal of the property of the assignor, to his trade and dealings with others and his accounts concerning the same, and all debts due or claimed from him, and any and all other matters concerning his property and estate or the concealment or embezzlement thereof and the due settlement of the estate according to law, which examination may, at the request of any party to the proceedings be reduced to writing and filed in said matter with the county clerk of said county; and may likewise at any time before the final settlement of the accounts of the assignee, require the attendance of and examine the assignee as to all matters appertaining to the estate of the assignor or the administration of said trust, and upon such examinations make such order in regard to costs as he shall deem proper. No power conferred upon the judge by this chapter shall be exercised by a circuit court commissioner except under a special reference made by the court.

Assignee to
keep
accounts.

Report.

SEC. 10. The assignee shall keep a regular account of all money received by him, to which account every creditor or other interested person shall be at liberty at all reasonable times to have access. Within three months after receiving such trust, the assignee shall file a report in said clerk's office of the condition of said estate, containing a statement of all

property whatsoever received by him and the disposition made thereof, and of all moneys received, disbursed and on hand, and shall quarterly thereafter make like report covering all matters since the preceding report. It shall be the duty of the assignee to close his trust if practicable within one year from the date the assignment is filed, but such court or judge shall have power upon cause shown to extend the time allowed for that purpose, for such further periods as may be reasonably necessary, but in case of application for any such extension, notice thereof by mail or otherwise as said court or judge may direct shall be given to the creditors who shall have the right to appear and be heard with reference thereto.

SEC. 11. Funds available for distribution shall be applied to the payment of the following items and in the following order:

1. All taxes legally due and owing by the assignor to the United States, State, county or municipality;
2. The cost of administration;
3. All labor debts entitled to preference under the laws of this State;
4. All other debts which under the laws of the United States or of this State are entitled to priority;
5. All other claims preferred and allowed;
6. Any remaining surplus to be paid to the assignor, his representatives or assigns.

In case the funds shall be insufficient to pay any class in full, then the same shall be distributed pro rata among such class. No dividend on general claims shall be paid until twenty days after the second notice required by section five has been given and proof of service thereof filed with the clerk. If at the time any dividend is made, any suit or claim be pending in which a demand against such assignor may be established, the assignee shall retain in his hands the proportion which would belong to such demand if established, and the necessary costs and expenses of such suit or proceeding to be applied according to the event thereof or to be distributed in a subsequent dividend. Any creditor, who shall have neglected to make proof of his claim before any dividend but who shall make proof before a subsequent dividend, shall receive the sum or sums he would have been entitled to on any former dividend or dividends before any further distribution be made to other creditors. It shall be the duty of the assignee to endeavor to make payment of all dividends to the persons entitled thereto. If any dividend that shall have been declared shall remain unpaid to the person entitled thereto until the estate is otherwise ready to be closed, the assignee shall consider it relinquished and shall distribute it among the other creditors unless otherwise ordered by the court.

SEC. 12. The assignee shall receive for his services, such compensation as may be allowed by the court. In the event of an estate being administered by more than one assignee

Close of trust.

Order of payment.

Method of payment.

When dividend deemed relinquished.

Compensation of assignee.

Notice of applications for allowance of compensation.

or by successive assignees, the court shall apportion the compensation between them according to the services actually rendered so that there shall not be paid to the assignees for the administering of any estate a greater amount than one assignee would be entitled to. The court may in its discretion withhold all compensation from any assignee who has been removed for cause. Ten days' notice by mail shall be given to the creditors of all applications for the allowance to the assignee of compensation and expenses, stating the amount of compensation and the items of expenses for which allowance is asked.

Fraud in assignment.

SEC. 13. In case there shall be any fraud in the matter of said assignment, or if the assignee shall fail to file the same, or to qualify or to comply with any of the provisions of this chapter, or to promptly and faithfully execute said trust, any person interested therein may file his bill in the circuit court in chancery in the proper county for the enforcement of said trust; and the court in its discretion may appoint a receiver or assignee therein and shall have power to order the summary examination before himself or a circuit court commissioner of any party or witness at any stage of said cause or other proceedings under this chapter, relative to the matters of said trust, and enforce attendance and the giving of testimony in the same manner as in the trial of causes in said circuit court in chancery. Any such receiver shall have the same rights, powers, duties and compensation and be subject to all the obligations and liabilities of an assignee.

Enforcement of trust.

CHAPTER XLIII.

Of the Relief of Poor Debtors From Imprisonment.

Who may apply for discharge.

SECTION 1. Every person who shall be imprisoned by virtue of one or more executions in civil causes, may make application for his discharge from imprisonment in the cases and in the manner hereinafter specified.

When may apply.

SEC. 2. Such application may be made at the times following, that is to say:

1. If the amount due on such executions shall not exceed twenty-five dollars, after he shall have been imprisoned thirty days;

2. If the amount due on such executions be more than twenty-five dollars, and not exceeding fifty dollars, after he shall have been imprisoned sixty days;

3. If the amount due on such executions be more than fifty dollars, and not exceeding one hundred dollars, after he shall have been imprisoned ninety days;

4. If the amount due on such executions be more than one hundred dollars, and not exceeding five hundred dollars, after he shall have been imprisoned six months;

5. If the amount due on such executions shall exceed five hundred dollars, after he shall have been imprisoned nine months.

SEC. 3. The person so entitled to apply for his discharge may represent to the jailor or sheriff in whose custody he shall be, that he is unable to pay the amount due on the execution or executions by virtue of which he is imprisoned, and is desirous to take the benefit of the law for the relief of poor debtors, and thereupon such sheriff or jailor shall make such desire known to a circuit court commissioner or judge of the circuit court for the same county, or to the judge of any superior court from which the execution or executions issued by virtue of which the person so entitled to apply for his discharge is imprisoned or held by such sheriff or jailor.

Representa-
tion to jailor.

Jailor to
notify- judge,
etc.

SEC. 4. The officer to whom such desire shall be so made known, shall thereupon appoint a time and place within the same county, for the examination of such debtor, and notice of such time and place shall be given to the plaintiff in every such execution or his attorney, if within the same or any adjoining county, at least three days before such examination.

Time for ex-
amination.

Notice.

SEC. 5. If neither such plaintiffs nor their attorneys shall be found within either of such counties, such notice shall be published by posting the same upon the outer door of the jail in which such person is imprisoned, at least six days before such examination.

Notice, how
published.

SEC. 6. On the day appointed for such examination, the sheriff or jailor shall have the prisoner at the place designated by such officer; and on due proof of notice having been given as hereinbefore provided, such judge or commissioner shall examine the prisoner on oath concerning his estate and effects, and the disposal thereof, and his ability to pay the sum for which he is committed, or any part thereof, and shall hear any other legal and pertinent evidence that may be produced by the prisoner or any plaintiff in such execution.

Examination.

SEC. 7. If the officer before whom such examination is had, shall be satisfied of the truth of the facts set forth in the oath to be taken by the debtor, and in the certificate to be made by such officer, as required in the two following sections, he shall administer to such debtor the oath hereinafter prescribed.

Oath to be
administered
to debtor.

SEC. 8. Such oath shall be in the following form: "I, , do solemnly swear (or affirm, as the case may be), that I have no estate, real or personal, to the amount of twenty dollars, except such goods and chattels as are by law exempt from execution, and that I have not any other estate, now conveyed or concealed, with design to secure the same to my use, or to the use of my family, or to defraud my creditors," which oath shall be signed by the person making the same, and be certified by the officer.

Form of oath.

SEC. 9. After administering such oath, such officer shall make a certificate under his hand, in substance in the following form:

Certificate to
be made.

"County of, ss.

"To the keeper of the jail of said county:

"I, the subscriber, judge of the circuit court (superior court, or a circuit court commissioner, as the case may be), for said county, do hereby certify that A. B., a poor prisoner, confined upon execution in a civil cause, in the jail of said county, has caused C. D., the person at whose suit he is imprisoned, to be notified according to law, of his desire to take the benefit of the law for the relief of poor debtors; that in my opinion the said A. B. has no estate, real or personal, to the amount of twenty dollars, except such goods and chattels as are by law exempt from execution, and has not any other estate now conveyed or concealed, or in any way disposed of with design to secure the same to his own use or the use of his family, or to defraud his creditors; and that I have, after due examination of the said A. B., administered to him the oath prescribed by law to be taken by poor prisoners, who are committed on execution in civil causes."

Jailor to
discharge
prisoner.

SEC. 10. The jailor upon receiving such certificate, shall discharge the prisoner so far as he is held in prison on the execution or executions therein mentioned, and such certificate, and the oath taken by such prisoner, shall be filed and preserved in the office of the clerk of the county in which the proceedings were had.

When
officer to
remand
prisoner.

SEC. 11. If the officer to whom any application shall be made under the provisions of this chapter, after the examination of the prisoner, shall not be satisfied that he is entitled to his discharge, such prisoner shall be remanded to prison; but he shall not thereby be prevented from obtaining his discharge upon new notice to the creditor or creditors, and new proceedings before the same or some other proper officer, in the manner herein provided.

Exemption
from arrest or
imprisonment.

SEC. 12. The debtor, after being so discharged, shall be forever exempted from arrest or imprisonment, for the same debt, unless he shall be convicted of having sworn falsely upon his examination before the officer, or in taking the oath before prescribed.

Penalty for
false swearing.

SEC. 13. If he shall be so convicted, he shall have no benefit from the proceedings had under this chapter, and shall be liable to the punishment of perjury; and the creditor or creditors may have new executions against the body, or against the goods and chattels, lands and tenements of the debtor, in like manner as if he had not been committed on execution.

CHAPTER XLIV.

Of the Punishment of Fraudulent Debtors.

Abolishment
of imprison-
ment for debt.

SECTION 1. No person shall be arrested or imprisoned on any civil process issuing out of any court of law, or on any execution issuing out of a court of equity, in any suit or

proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract expressed or implied, or for the recovery of any damages for the nonperformance of any contract.

SEC. 2. The preceding section shall not extend to proceed- Exceptions.
ing as for contempts to enforce civil remedies; nor to actions for fines, penalties, or forfeitures, or on promises to marry where fraud is alleged, or for moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment.

SEC. 3. In all cases, where by the preceding provisions of this chapter a defendant cannot be arrested or imprisoned, it shall be lawful for the plaintiff who shall have commenced a suit against such defendant, or shall have obtained a judgment or decree against him in any court of record, or justice's court, to apply to any judge of the court in which such suit is brought, or to any circuit judge or circuit court commissioner, or to any justice of the peace before whom such suit is pending or judgment obtained, or before whom such proceedings shall have been transferred, for a warrant to arrest the defendant in such suit. Power of plaintiff to arrest defendant

SEC. 4. No such warrant shall issue unless satisfactory In what cases warrant may issue.
evidence shall be adduced to such officer, by the affidavit of the plaintiff, or of some other person or persons, that there is a debt or demand due to the plaintiff from the defendant, and specifying the nature and amount thereof as near as may be, for which the defendant, according to the provisions of this chapter, cannot be arrested or imprisoned, and establishing one or more of the following particulars:

1. That the defendant is about to remove any of his property out of the jurisdiction of the court in which the suit is brought with intent to defraud his creditor or creditors; or

2. That the defendant has property or rights in action, which he fraudulently conceals, or that he has rights in action, or some interest in any public or corporate stock, money, or evidence of debt which he unjustly refuses to apply to the payment of any judgment or decree which shall have been rendered against him, belonging to the plaintiff; or

3. That he has assigned, removed or disposed of, or is about to dispose of any of his property, with the intent to defraud his creditor or creditors; or

4. That the defendant fraudulently contracted the debt, or incurred the obligation, respecting which such suit is brought.

SEC. 5. Upon such proof being made to the satisfaction of the officer to whom the application shall be made, he shall issue a warrant under his hand, in behalf of the people of this State, directed to the sheriff or any constable of the county within which such officer shall reside, therein briefly setting forth the nature of the complaint, and commanding the officer to whom it shall be directed, to arrest the person named in such warrant, and bring him before such officer without delay; which warrant shall be accompanied by a copy Issue of warrant.

of all affidavits presented to such officer, upon which the warrant issued; which shall be certified by such officer, and shall be delivered to the defendant at the time of serving the warrant by the officer serving the same.

How warrant
executed.

SEC. 6. The officer to whom such warrant shall be delivered shall execute the same by arresting the person named therein, and bringing him before the officer issuing such warrant; or in case of the absence or inability of such officer, before some other officer having jurisdiction in the case, and shall keep him in custody until he shall be duly discharged or committed as hereinafter provided.

Party may
controvert
facts on
which warrant
issued.

SEC. 7. On the person so arrested being brought before such officer, he may controvert any of the facts and circumstances on which such warrant issued, and may, at his option, verify his allegations by his own affidavit; and in case of his so verifying the same, the plaintiff may examine such defendant on oath, touching any fact or circumstance material to the inquiry, and the answers of the defendant on such examination shall be reduced to writing, and subscribed by him; and the officer conducting such inquiry shall also receive such other proofs as the parties may offer, either at the time of such first appearance, or at such other time as such hearing shall be adjourned to; and in case of an adjournment, such officer may take a recognizance, with surety, from the defendant, for his appearance at the adjourned meeting, and conditioned that said defendant will not meanwhile secrete, destroy, dispose of, or in any manner make way with, or put out of his possession, any of his property not exempt from sale on execution; and in case the said defendant shall refuse to enter into such recognizance, he shall be committed to the county jail, and there to remain until such time as the said hearing shall have been adjourned to, or until he shall give the bond hereinbefore provided.

Examination.

Recognizance
on adjourn-
ment.

Power
of officer.

SEC. 8. The officer conducting such inquiry shall have the same authority to issue subpoenas for witnesses and to enforce obedience to such subpoenas, and to punish witnesses refusing to testify, as are conferred by law upon such officers in cases of other proceedings before them, and the defendant shall be entitled to a jury of six jurors, if he demand one, to try the issue joined in the matters charged or alleged against him in the affidavit or affidavits exhibited to or before the said officer conducting such inquiry, which jury shall be selected and summoned in the same manner, as near as may be, as in the trial of criminal cases before justices of the peace, and the said officer shall have the same power in relation to the selection, summoning and swearing such jury and conducting such jury trial, as near as may be, as is given to justices of the peace in the trial of criminal cases before them.

Jury.

Commitment
of defendant
to jail.

SEC. 9. If such officer is satisfied that the allegations of the plaintiff are substantiated, and that the defendant has done, or is about to do, any one of the acts specified in the fourth

section of this chapter, upon which a warrant is authorized to be issued, he shall, by a commitment under his hand, direct that such defendant be committed to the jail of the county in which such hearing shall be had, to be there detained until he shall be discharged according to law; and such defendant shall be committed and detained accordingly.

SEC. 10. Such commitment shall not be granted, if the defendant shall either: When commitment not granted.

1. Pay the debt or demand claimed, with the costs of the suit and of the proceedings against him; or

2. Give security to the satisfaction of the officer before whom the hearing shall be had, that the debt or demand of the plaintiff, with the costs of the suit and proceedings aforesaid, shall be paid within ninety days, if a judgment shall have been recovered thereon; or within ninety days after such judgment shall be obtained, in case no judgment shall have been rendered thereon; or

3. Enter into a bond to the plaintiff in a penalty of not less than twice the amount of the debt or demand claimed, giving such surety or sureties as shall be approved by such officer, conditioned that such defendant will, within thirty days thereafter, make a general assignment of all his property, for the benefit of his creditors, in accordance with the provisions of chapter forty-two of this act, or file a petition for adjudication in bankruptcy, under the federal bankruptcy law, and diligently prosecute the same until he obtains a discharge; and that he will not, before making such assignment, or filing the petition for such adjudication, in any way dispose of any money, property, or rights in action, or interest in any public or corporate stock, or evidence of debt, or anything valuable whatever, which he possessed at the time of such arrest, not exempt from execution.

SEC. 11. Any defendant committed as above provided, shall remain in custody in the same manner as other prisoners, until a final judgment shall have been rendered in his favor, in the suit prosecuted by the creditor at whose instance such defendant shall have been committed, or until he shall have made an assignment, in accordance with the provisions of chapter forty-two of this act, or shall have been adjudicated a bankrupt, in accordance with the federal bankruptcy law; but such defendant may be discharged by the officer committing him, or any other person authorized to discharge the duties of such officer, on defendant paying the debt or demand claimed, or giving security for the payment thereof, as provided in the tenth section of this chapter, or on his executing the bond mentioned in the third subdivision of said section; but any defendant so committed, or ordered to be committed, may, at any time within twenty-four hours after the making of such order, appeal therefrom to the circuit court of the county, provided said defendant shall enter into a bond to the plaintiff in not less than double the amount of plaintiff's demand, and not less than five hundred Custody of defendant committed. How may be discharged. Appeal.

dollars, with one or more sufficient sureties, to be approved by such officer conditioned to appear before said court on the first day of the next term thereof, and prosecute his appeal to effect and abide the order and judgment of said court, and with like conditions as to the disposition of property and effects, pending such appeal as are contained in the third subdivision of section ten; and the officer from whose order or judgment an appeal is taken, shall thereupon discharge the said defendant from custody, or order his discharge, and shall make a special return of the proceedings had before him, and shall cause the affidavit or affidavits and warrant and the return, together with the bond, to be filed in the said circuit court on or before the first day of the next term thereof. The said circuit court shall thereupon have full jurisdiction of said case, the same as was had by the officer below, before whom such proceedings were commenced, and may conduct the same to a final hearing and determination in like manner with the same right to the defendant to demand and have a trial by jury.

Fees and compensation.

SEC. 12. The fees and compensation of all officers and witnesses, performing services under the provisions of this chapter, shall be the same as are or may be provided by law, and the same may be taxed in favor of the prevailing party as in other civil cases.

Property exempt from execution.

SEC. 13. Whenever in this chapter, the removal, concealment or disposal of any property, is declared to be the ground of any complaint or proceeding, it shall not be deemed to apply to any property which shall be expressly exempted by law from levy and sale under execution.

Recovery on bond.

SEC. 14. Whenever a bond, given under the tenth section of this chapter, shall become forfeited by the non-performance of the condition thereof, the plaintiff shall be entitled to recover thereon the amount due to him on the judgment obtained in the original suit instituted against the defendant giving such bond.

Removal, sequestration, etc., of property.

SEC. 15. Any person who shall remove any of his property out of any county, with intent to prevent the same from being levied upon by an execution, or who shall secrete, assign, convey, or otherwise dispose of any of his property, with intent to defraud any creditor, or to prevent such property from being made liable for the payment of his debts, and any person who shall receive such property with such intent, shall, on conviction thereof, be deemed guilty of a misdemeanor.

No excuse from answering bill of discovery, etc.

SEC. 16. No person shall be excused from answering any bill in equity, seeking a discovery in relation to any fraud prohibited by this chapter, or from answering as a witness in relation to any such fraud, but no such answer shall be used in evidence in any other suit or prosecution.

CHAPTER XLV.

Of Arbitrations.

SEC. 1. All persons, except infants and persons of unsound mind, may, by an instrument in writing, submit to the decision of one or more arbitrators, any controversy existing between them, which might be the subject of an action at law, or of a suit in chancery, except as herein otherwise provided; and may, in such submission, agree that a judgment of any circuit or superior court, to be designated in such instrument, shall be rendered upon the award made pursuant to such submission.

Who may agree to arbitration.

SEC. 2. No such submission shall be made respecting the claim of any person to any estate, in fee, or for life, in real estate; but any claim to an interest for a term of years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be so submitted to arbitration.

Claims to real estate.

SEC. 3. Every such submission shall be acknowledged by the parties signing the same, before some officer authorized to take the acknowledgment of deeds, who shall certify such acknowledgment thereon.

Submission to be acknowledged.

SEC. 4. The arbitrators so selected shall appoint a time and place for the hearing, and shall adjourn the same from time to time, as may be necessary; and on the application of either party, and for good cause, they may postpone such hearing to any time not extending beyond the day fixed in such submission for rendering their award.

Time and place of hearing.

SEC. 5. Before proceeding to hear any testimony, the arbitrators shall be sworn faithfully and fairly to hear and examine the matters in controversy submitted to them, and to make a just award thereon according to the best of their understanding, and either of such arbitrators shall have power to administer all necessary oaths to witnesses examined before them.

Oath of arbitrators, etc.

SEC. 6. Witnesses may be compelled to appear before such arbitrators by subpoenas, to be issued by any justice of the peace, in the same manner and with the like effect, and subject to the same penalties for disobedience, or for refusing to be sworn or to testify, as in cases of trials before justices of the peace.

Witnesses.

SEC. 7. All the arbitrators must meet together, and hear the proofs and allegations of the parties; but an award by a majority of them shall be valid, unless the concurrence of all the arbitrators be expressly required in the submission.

All arbitrators to meet; majority may award.

SEC. 8. Upon such submission, and the award made in pursuance thereof, being filed with the clerk of the court designated in such submission, within one year after the making of the award, such court shall, by rule in open court, confirm

Confirmation of award.

Vacating
award.

such award, unless the same be vacated or modified, or a decision thereon be postponed, as herein provided.

SEC. 9. Any party complaining of such award, may move the court designated in such submission, to vacate the same, upon either of the following grounds:

1. That such award was procured by corruption, fraud, or other undue means;

2. That there was evident partiality or corruption in the arbitrators, or either of them;

3. That the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear any evidence, pertinent and material to the controversy; or any other misbehavior by which the rights of any party shall have been prejudiced;

4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award on the subject matter submitted, was not made.

Correction
of award.

SEC. 10. Any party to such submission, may also move the court designated therein to modify or correct such award, in the following cases:

1. Where there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in such award;

2. Where the arbitrators shall have awarded upon some matter not submitted to them, not affecting the merits of the decision upon the matter submitted;

3. When the award shall be imperfect in some matter of form, not affecting the merits of the controversy; and where, if it had been a verdict, such defect could have been amended or disregarded by the court, according to the provisions of law.

Motions to
vacate or
modify
award.

SEC. 11. Every such application to vacate or modify an award, shall be made to the court designated in the submission, at the next term after the publication of such award, upon due notice to the adverse party as in other cases of special motions, if there be time for that purpose; and if there be not time, such court, or any judge thereof, may, upon good cause shown, order a stay of proceedings on such award, either absolutely, or upon such terms as shall appear just, until the term of the court next after such first term.

Proceedings
by court
thereon.

SEC. 12. On such application, the court may vacate such award in any of the cases hereinbefore specified, and may, in their discretion, direct a re-hearing by the same arbitrators; and in the cases herein specified, the court may modify and correct such award, so as to effect the intent thereof, and to promote justice between the parties.

Judgment.

SEC. 13. Upon such award being confirmed or modified, the court shall render judgment in favor of the party to whom any sum of money or damages shall have been awarded, that he recover the same; and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order.

SEC. 14. The costs of the proceedings shall be taxed as in Costs. suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make the same allowance as provided by law, in cases of references.

SEC. 15. A record of such judgment shall be made, com- Record of judgment. mencing with a memorandum reciting the submission; then stating the hearing before the arbitrators; their award; the proceedings of the court thereupon, in modifying or confirming such award; and the judgment of the court for the recovery of the debt or damages awarded, and that the parties performed the acts ordered by the award, and for the recovery of the costs allowed.

SEC. 16. Such record shall be filed and docketed, as records Effect of judgment. of judgments in other cases; shall have the same force and effect in all respects; be subject to all the provisions of law in relation to judgments in actions; and may in like manner, be removed and reversed by writ of error; and execu- Execution. tion shall issue thereupon against the property or person of any party against whom a recovery shall be had, in all respects as upon other judgments.

SEC. 17. When any writ of error shall be brought on any Writ of error. such judgment rendered in a circuit court, certified copies of the original affidavits upon which any application in relation to such award was founded, and of all other affidavits and papers relating to such application, shall be annexed to, form a part of, and be returned with the record of the judgment; and the court to which such writ shall be returned, shall reverse, modify or amend, or affirm such judgment, or any part thereof, according to justice.

SEC. 18. When by such judgment, any party shall be re- Enforcement of certain judgments. quired to perform any act, other than the payment of money, the court rendering such judgment shall enforce the same by rule; and the party refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court, and may be proceeded against in the manner provided by law in such cases.

SEC. 19. If upon any application made pursuant to the Costs. foregoing provisions, the court shall vacate and set aside any award of arbitrators, costs may, in the discretion of the court, be awarded to the prevailing party; and the payment thereof may be enforced by rule of the court, as in other cases.

SEC. 20. Upon every such order vacating an award, made Writ of error on order vacating. by any circuit or superior court, the party aggrieved may bring a writ of error, as upon any other judgment of such court; to which writ shall be returned certified copies of such order, and of all affidavits and papers used on such application; and the court to which such writ shall be returned, shall proceed to confirm or reverse such order, as shall be just.

SEC. 21. If such order be reversed, the proceedings shall Proceedings on reversal. be remitted to the court from which they were removed, to

proceed thereon; or the court to which such proceedings shall have been returned, may proceed thereon to modify or confirm the award, and to render judgment thereon, in the same manner, and with the like effect, as if such court had been designated in the submission.

Construction
of this
chapter.

SEC. 22. Nothing contained in this chapter shall be construed to impair, diminish, or in any manner to affect the power and authority of any court of chancery, over arbitrators, awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement to abide an award.

Neither party
to revoke
submission
without con-
sent, etc.

SEC. 23. Neither party shall have power to revoke any submission made as provided in this chapter, without the consent of the other party; and if either party shall neglect to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matter submitted to them, upon the evidence produced by the other party.

CHAPTER XLVI.

Of the Fees of Certain Officers.

Fees allowed.

SECTION 1. For the services mentioned in this chapter, hereafter done or performed in the several courts in this State, by the officers thereof, or in any proceeding authorized by law, the fees hereinafter prescribed shall be allowed.

Commence-
ment of suit.

SEC. 2. Before any suit at law or in chancery shall be commenced in any circuit court or in the superior court of Grand Rapids or before the filing of any application for a writ of mandamus, prohibition, quo warranto, habeas corpus or other extraordinary writ, there shall be paid to the clerk of said court by the moving party the sum of three dollars.

Filing
transcript.

SEC. 3. Before the filing and entering of any transcript from justice's court, there shall be paid to said clerk the sum of one dollar.

Default.

SEC. 4. Before the entry of any final judgment by default in an action at law or pro confesso decree in chancery, there shall be paid to said clerk the sum of two dollars.

Suit at law.

SEC. 5. Before the entry of any final judgment in a suit at law wherein a trial has been had, there shall be paid to said clerk the sum of four dollars.

Contested
chancery
cases.

SEC. 6. Before the entry of any final decree in a contested chancery case, there shall be paid to said clerk the sum of three dollars.

Ex parte
chancery.

SEC. 7. Before the filing of any ex parte petition in chancery, there shall be paid to said clerk the sum of two dollars which shall be in full of all fees for said proceeding.

Ex parte,
at law.

SEC. 8. Before the filing of any ex parte petition at law, there shall be paid to said clerk the sum of four dollars which shall be in full of all fees for said proceeding.

SEC. 9. For any and all services relative to the receipt, safe-keeping, putting out money, or purchasing, taking or trans-

ferring any security therefor, or collecting interest thereon, under the direction of the court, not herein specifically provided for, such allowance and compensation, and from such of the parties as the court may consider just and shall direct, by an order for that purpose, after notice to the parties to be charged therewith.

SEC. 10. For all certified copies, and exemplifications of records, pleadings and proceedings furnished on request, where no special provision is otherwise made, eight cents for each folio. Certified copies, etc.

SEC. 11. Upon appeal to supreme court on writ of error, and in chancery appeals, there shall be paid to said clerk the sum of five dollars and the appellant shall furnish copies of pleadings and exemplification of records or proceedings to be sent. Writ of error, etc.

SEC. 12. The sum or sums paid as aforesaid shall be held to be in full for all clerk, entry, judgment and decree fees in any suit from the commencement thereof to and including the issuance and return of the execution or other final process. Payment in full.

SEC. 13. In counties where the county clerk receives the fees of his office, all or in part, in lieu of salary, all or in part, the said clerk shall pay over to the county treasurer the sum of two dollars on each and every suit at law that shall be commenced in the circuit court; and in counties where the county clerk is paid a salary in lieu of fees collected by the county clerk, pursuant to this chapter, all fees shall be paid over to the county treasurer as required by law. Disposition of money.

CHAPTER XLVII.

Of Costs and the Taxation Thereof.

SECTION 1. In each and every issue of fact tried and contested before the court or jury in which the stenographer shall be employed, there shall be taxed three dollars, the same to be paid by the plaintiff in the suit, before the taking of testimony is commenced, into the hands of the clerk of the court, and by him into the county treasury, to apply to the credit of the general expense fund, and if the plaintiff shall prevail in the suit the amount so paid by him shall be taxed in his costs, as proper disbursements. Stenographer fee.

SEC. 2. Where a transcript of the stenographer's notes, taken in circuit court, is desired for the purpose of moving for a new trial, preparing a bill of exceptions, or removing the cause to the supreme court, the amount of stenographer's fees paid therefor shall be recovered as a part of the taxable costs by the prevailing party in such motion, or in the supreme court. Transcript of stenographer's notes.

SEC. 3. In actions against foreign corporations where the service of process is made upon the Secretary of State, the fee paid to the Secretary of State at the time of such service, Secretary of state's fee.

proceed thereon; or the court to which such proceedings shall have been returned, may proceed thereon to modify or confirm the award, and to render judgment thereon, in the same manner, and with the like effect, as if such court had been designated in the submission.

Construction
of this
chapter.

SEC. 22. Nothing contained in this chapter shall be construed to impair, diminish, or in any manner to affect the power and authority of any court of chancery, over arbitrators, awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement to abide an award.

Neither party
to revoke
submission
without con-
sent, etc.

SEC. 23. Neither party shall have power to revoke any submission made as provided in this chapter, without the consent of the other party; and if either party shall neglect to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matter submitted to them, upon the evidence produced by the other party.

CHAPTER XLVI.

Of the Fees of Certain Officers.

Fees allowed.

SECTION 1. For the services mentioned in this chapter, hereafter done or performed in the several courts in this State, by the officers thereof, or in any proceeding authorized by law, the fees hereinafter prescribed shall be allowed.

Commence-
ment of suit.

SEC. 2. Before any suit at law or in chancery shall be commenced in any circuit court or in the superior court of Grand Rapids or before the filing of any application for a writ of mandamus, prohibition, quo warranto, habeas corpus or other extraordinary writ, there shall be paid to the clerk of said court by the moving party the sum of three dollars.

Filing
transcript.

SEC. 3. Before the filing and entering of any transcript from justice's court, there shall be paid to said clerk the sum of one dollar.

Default.

SEC. 4. Before the entry of any final judgment by default in an action at law or pro confesso decree in chancery, there shall be paid to said clerk the sum of two dollars.

Suit at law.

SEC. 5. Before the entry of any final judgment in a suit at law wherein a trial has been had, there shall be paid to said clerk the sum of four dollars.

Contested
chancery
cases.

SEC. 6. Before the entry of any final decree in a contested chancery case, there shall be paid to said clerk the sum of three dollars.

Ex parte
chancery.

SEC. 7. Before the filing of any ex parte petition in chancery, there shall be paid to said clerk the sum of two dollars which shall be in full of all fees for said proceeding.

Ex parte,
at law.

SEC. 8. Before the filing of any ex parte petition at law, there shall be paid to said clerk the sum of four dollars which shall be in full of all fees for said proceeding.

Services
in case of
money, etc.

SEC. 9. For any and all services relative to the receipt, safe-keeping, putting out money, or purchasing, taking or trans-

fering any security therefor, or collecting interest thereon, under the direction of the court, not herein specifically provided for, such allowance and compensation; and from such of the parties as the court may consider just and shall direct, by an order for that purpose, after notice to the parties to be charged therewith.

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CHAPTER XLVII.

Of Costs and the Taxation Thereof.

SECTION 1. In each and every issue of fact tried and contested before the court or jury in which the stenographer shall be employed, there shall be taxed three dollars, the same to be paid by the plaintiff in the suit, before the taking of testimony is commenced, into the hands of the clerk of the court, and by him into the county treasury, to apply to the credit of the general expense fund, and if the plaintiff shall prevail in the suit the amount so paid by him shall be taxed in his costs, as proper disbursements. Stenographer fee.

SEC. 2. Where a transcript of the stenographer's notes, taken in circuit court, is desired for the purpose of moving for a new trial, preparing a bill of exceptions, or removing the cause to the supreme court, the amount of stenographer's fees paid therefor shall be recovered as a part of the taxable costs by the prevailing party in such motion, or in the supreme court. Transcript of stenographer's notes.

SEC. 3. In actions against foreign corporations where the service of process is made upon the Secretary of State, the fee paid to the Secretary of State at the time of such service. Secretary of state's fee.

may be taxed as costs to the plaintiff, in case he prevails in the proceedings.

Sundry costs.

SEC. 4. There shall be allowed to the prevailing parties costs in addition to the fees of officers, disbursements, and witnesses in suits at law, commenced or brought into the circuit court, by appeal or otherwise, as follows: For proceedings before trial, in all civil cases, fifteen dollars; for the trial of any case, fifteen dollars; in all actions where judgment is taken by default or upon cognovit, fifteen dollars; in all cases of special motions, such sum not exceeding fifteen dollars, as the court shall deem just; for every term at which a cause is regularly on the calendar and not reached, or is postponed, excluding that at which it is tried, five dollars: *Provided*, That no such term fee shall be allowed to any party for any term at which he was allowed a continuance fee; in all cases heard and determined on appeal, the costs, or such part thereof as to the court shall seem just, in view of the particular circumstances of each case, may be awarded to either party; in all cases of certiorari to a circuit court, to the prevailing party, fifteen dollars. If the judgment in certiorari be reversed in part, and affirmed as to the residue, costs shall be in the discretion of the court; in all cases, the party prevailing in the circuit court may tax in addition to the costs above allowed him, such costs as he would have been entitled to tax had he prevailed in the court below, and such costs as he paid on taking the appeal, if he was appellant in the cause.

Proviso,
when term
fee not
allowed.

Defendant's
costs in
chancery.

SEC. 5. If the plaintiff in chancery shall dismiss his bill or petition, or if the same shall be dismissed for want of prosecution, the defendant shall recover his costs, except in those cases where, according to the practice of the court, costs would not be awarded against such plaintiff upon a decree rendered on hearing the cause.

Costs directed
by court.

SEC. 6. In all other cases where no special provision shall be made by law, the costs of all suits and proceedings in chancery, shall be paid by such party as the court shall direct.

Costs re-
coverable by
plaintiff.

SEC. 7. In the following cases, if the plaintiff recover judgment by default, upon confession, verdict, or otherwise in any action or proceeding at law, he shall recover his costs:

1. In all actions of ejectment, or for waste or private nuisance, and in all proceedings to recover the possession of land forcibly entered, or forcibly or otherwise unlawfully detained;

2. In all actions to which the title of lands or tenements, or right of way, or right by prescription or otherwise, to any easement in any land, or to overflow the same, or to do any other injury thereto, shall have been put in issue by the pleadings, or shall have come in question on the trial of the cause;

3. In suits and proceedings upon writs of prohibition, or information in the nature of a quo warranto;

4. In all actions of replevin, and in all actions for the recovery of any debt or damages, or for the recovery of penal-

ties or forfeitures, in all cases where the court has exclusive or concurrent jurisdiction;

5. In all actions where the plaintiff shall recover less than one hundred dollars, if it appear that his claim, as established at the trial, exceeded one hundred dollars and the same was reduced by set-off; or if the suit was one which could not have been lawfully commenced in justice court;

6. In actions for trespass upon land, or for taking personal property, where the court before whom the same shall be tried shall certify in their minutes, or the jury by whom the damages shall be assessed shall find and return in their verdict, that such trespass was wilful and malicious;

7. In actions for a false return, or for any other malfeasance or misfeasance by any ministerial or judicial officer in such capacity or office, except such actions against constables or other ministerial officers, touching their duties upon process issued in civil actions brought in a justice's court.

SEC. 8. If the plaintiff in an action for assault and battery, or false imprisonment, or malicious prosecution, or for slanderous words, or for libel, recover less than fifty dollars, such plaintiff shall recover no more costs than damages. Assault and battery, false imprisonment, etc.

SEC. 9. If the plaintiff, in any action brought to recover damages, occasioned by the erection of any dam upon the lands of the defendant, for manufacturing or milling purposes, and the flowing of the lands of the plaintiff, recover less than fifty dollars, such plaintiff shall recover no more costs than damages. Flowing of lands, etc.

SEC. 10. In all actions and proceedings in which the plaintiff would be entitled to costs, upon a judgment rendered in his favor, if, after the appearance of the defendant, such plaintiff be nonsuited, discontinue his suit, be non prossed or judgment pass against him on verdict, or otherwise; or in case a plaintiff recover judgment, but not enough to entitle him to costs; the defendant shall have judgment to recover against such plaintiff his full costs, which shall have the like effect as all other judgments. Defendant to recover costs, when.

SEC. 11. When several persons are made defendants in any suit or proceeding, or in any action in which the plaintiff, upon a recovery, would be entitled to costs, and one or more of them shall be acquitted by a verdict on the trial, or by judgment upon motion to dismiss, or by the plaintiff's discontinuing, as to such defendant, every person so acquitted shall recover his costs of suit, in like manner as if judgment had been rendered in favor of all the defendants. Defendants acquitted.

SEC. 12. But if such person be so acquitted in any action brought for the recovery of land, or the possession thereof, or for nuisance, waste, trespass, or trespass on the case for any nonfeasance or misfeasance, and if the judge or court before whom such trial shall be had, or such judgment shall be given, shall certify in the minutes of the court that there was reasonable cause for making the person so acquitted a defendant in such action, then such person shall not be en- Reasonable cause of action.

titled to recover such costs; and no costs shall be recovered against him.

Actions on
contract,
judgment
for one of
defendants.

SEC. 13. If in any action founded upon a contract, the plaintiff fail to recover against one of several defendants on the trial, or if judgment on a motion to dismiss be rendered in favor of one of several defendants; or if, by the plaintiff's discontinuing as to such defendant, he be acquitted; such defendant shall not be entitled to recover costs, unless a certificate be given by the judge or court before whom the trial shall be had, or the judgment shall be given, and be entered in its minutes, that such defendant was unreasonably and unnecessarily made a party to such action.

Single costs.

SEC. 14. Whenever, by the provisions of any statute, a plaintiff shall be entitled to recover double or treble the damages assessed by a jury, if such damages so doubled or trebled, as the case may be, entitled him to recover costs, he shall recover single costs only in such suit, except in cases otherwise specially provided for by law.

One and
one-half
costs for
defendants.

SEC. 15. In the following actions, if judgment be rendered for the defendant upon verdict, motion to dismiss, nonsuit, non pros., discontinuance of the plaintiff or otherwise, in any action, certiorari, writ of error or other proceeding, such defendant shall recover the amount of his taxed costs, and one-half thereof in addition:

1. In actions against public officers appointed under the authority of this State, or elected by the people; or against any person specially appointed according to law, to execute the duties of such public officer; for or concerning any act done by such officer or person, by virtue of his office, or for or concerning the omission, by such officer or person, to do any act, which it was his official duty to perform;

2. In actions against any other person, for doing any act by the commandment of such officers or persons, or in their aid or assistance, touching the duties of such office or appointment;

3. In actions against any person, for making any sale, or doing any other act by authority of any statute of this State.

Double or
treble costs
to belong to
defendant.

SEC. 16. When double or treble costs shall be awarded to any defendant, the same shall be deemed to belong to such defendant, and the officers who may have rendered any services in such action to such defendant, and the witnesses and jurors in such action, shall be entitled to receive and retain only the single costs allowed by law for their services respectively.

Costs, how
awarded
in certain
cases.

SEC. 17. When there shall be several issues in any case, and a verdict shall be rendered for the plaintiff on one or more of them, and for the defendant on another, if the plaintiff obtain judgment upon the whole record, costs shall be awarded as follows:

1. When the substantial cause of action was the same in each issue, the plaintiff shall recover costs on those issues which were found for him, and shall not be liable to the de-

fendant for the costs of the issue which shall have been found for the defendant;

2. When there are two or more distinct causes of action in separate counts, the plaintiff shall recover costs on those issues which are found for him, and the defendant on those which are found in his favor.

SEC. 18. If judgment be recovered for the defendant on the whole record, the costs of the issues which may be found for the plaintiff, shall not be allowed to either party. When not allowed to either party.

SEC. 19. When judgment shall be rendered in favor of a defendant, upon motion to dismiss one or more counts in a declaration, and the plaintiff shall have judgment on other counts on such motion, on verdict, or by default, the defendant shall be allowed his costs upon such judgment in his favor. Defendant allowed costs on motion to dismiss counts in declaration, etc.

SEC. 20. If, upon a writ of error, the judgment be reversed, the appellant shall recover costs, unless in such judgment a new trial be ordered, in which case the costs on such reversal shall be in the discretion of the court; and if a judgment be reversed in part, and affirmed in part, costs shall be awarded to either party in the discretion of the court. On writ of error. Discretionary costs.

SEC. 21. If, upon such writ, the judgment be affirmed, or the writ be discontinued or quashed, or the appellant be nonsuited, the appellee shall recover costs; and also damages for the delay and vexation, to be assessed in the discretion of the court before whom the writ was returnable. Damages for delay, etc.

SEC. 22. If the judgment so affirmed was rendered after verdict, the appellee may recover twice the amount of his taxed bill of costs, in the discretion of the court. Twice amount of costs.

SEC. 23. The court to which any writ of error may be returnable, or to which any appeal may be made, may award costs against the party neglecting to file such writ, or the transcript of the record intended to be removed thereby, or neglecting to file such appeal, and the pleadings and proceedings appealed from, according to law, and the rules of the court; and may also award costs against either party for any discontinuance or default. Neglect to prosecute writ of error.

SEC. 24. Upon appeals from probate courts to a circuit court, and from the circuit courts to the supreme court, costs shall be paid by the appellant or appellee, as shall be directed by the court to which the appeal is made; and upon affirming any sentence, determination or decree, or upon the appeal being discontinued or quashed, the court may, in its discretion, award damages for the delay and vexation caused by such appeal. On appeals from probate court.

SEC. 25. In all civil suits and proceedings by or in the name of the people of this State, instituted by any officer duly authorized for that purpose, and not brought on the relation, or for the use of any citizen, or upon any penal statute, the people shall be liable for costs in the same cases, and to the same extent, as if such suit or proceeding were instituted by an individual. Liability of people for costs.

Relators
liable for,
and entitled
to, costs.

SEC. 26. When a suit or proceeding shall be instituted in the name of the people of this State, on the relation of any citizen, such relator shall be entitled to and liable for costs, in the same cases, and to the same extent, as if such suit or proceeding had been instituted in his own name.

Costs in
mandamus
discretionary.

SEC. 27. In suits and proceedings upon writs of mandamus, the supreme court may, in its discretion, award or refuse costs to any party therein; and upon refusing an alternate or peremptory mandamus, the court may award costs to be paid by the party applying for such mandamus.

Costs on
attachment.

SEC. 28. In proceedings by attachment, to enforce or protect the civil rights or remedies of parties, or for the non-payment of any sum of money, costs shall be awarded to be paid by the offending party.

How costs
taxed in
supreme
court.

SEC. 29. Costs in the supreme court shall be taxed by one of the justices or the clerk thereof, and by such other officers as the supreme court shall, by general or special order, designate for that purpose; and upon such notice to the opposite party, as shall be prescribed by the general rules of the court.

How in
circuit
courts, etc.

SEC. 30. Costs in the several circuit courts, and in municipal courts of record having civil jurisdiction, may be taxed by any officer authorized to tax costs in the supreme court, by circuit court commissioner, or the clerks of the said circuit and municipal courts respectively, and upon the like notice as shall be required in the supreme court.

When fees to
be taxed.

SEC. 31. Upon the settlement of an execution by a defendant, or upon settling any suit or demand, the sheriff or attorney claiming any fees which shall not have been taxed, shall, upon being required by the defendant, and on his paying the expenses thereof, have his fees taxed by some proper officer authorized to tax costs in the court in which the suit may be pending; or from which the execution shall have been issued.

Not to be
collected
until taxed.

SEC. 32. No sheriff or attorney shall collect any fees after having been required as aforesaid to have the same taxed, without such taxation having been made.

Taxing costs
of foreclosure
of mortgage.

SEC. 33. The costs and expenses of foreclosing any mortgage by advertisement, shall be taxed by some officer authorized to tax costs in the circuit court, upon the requisition of any party liable to pay the same, and upon such party paying the expense thereof.

Duties of
taxing
officers.

SEC. 34. Every officer authorized to tax costs in any court for services rendered in any proceeding authorized by law, shall examine the bills presented to him for taxation, whether such taxation be opposed or not, and shall be satisfied that the items charged in such bill are correct and legal; and shall strike out all charges for services, which, in his judgment, were not necessary to be performed.

Affidavit.

SEC. 35. When there shall be charges in a bill of costs for the attendance of any witness or for copies or exemplifications of documents or papers, or for any other disbursements, except to officers for services rendered, such charges for wit-

nesses shall not be taxed without an affidavit stating the distance they respectively traveled and the days they actually attended; and such charges for copies shall not be taxed without an affidavit that such copies were actually and necessarily used or necessarily obtained for use; nor shall such disbursements be allowed without an affidavit specifying the items thereof particularly, nor unless they appear to have been necessary and reasonable in amount, when in any case a party is entitled to charge witness fees, and his bill of costs shall contain an item or items for the attendance and travel of the party himself as a witness, such item or items shall be taxed upon affidavit that the party was in attendance upon the court for the time charged for the purpose of being sworn as a witness and not to assist in the management of the cause, and that the travel was for the purpose of giving his evidence.

SEC. 36. If upon the trial of any cause, the plaintiff's claim shall be reduced by set-off, or any other fact shall appear which will entitle either party to costs, or to double costs, the judge holding the court shall, on the application of either party, either before or after verdict rendered, cause an entry to be made in the minutes of the court, specifying that such fact appeared; and no evidence shall be received by any taxing officer of such matter, other than a certified copy of such minutes, or the certificate of the judge who tried the cause.

Evidence of
right to costs,
etc., in
certain cases.

CHAPTER XLVIII.

Fees of Sheriffs, Witnesses, Grand and Petit Jurors.

Fees of Sheriffs.

SECTION 1. The sheriff or other officer, serving any process or paper, shall only be entitled to traveling fees for such service, from the county seat of the county in which service was made, to the place of service therein.

Traveling
fees.

SEC. 2. For serving a summons, writ of replevin, or other processes by which a suit shall be commenced in a court of law, a writ of garnishment, or a summons to appear and answer in chancery, seventy-five cents when service is made on one defendant only, and for the service on each additional defendant, twenty-five cents; for traveling in making such service, on the usual traveled route, ten cents per mile for going only, to be computed in all cases from the court house of the county in which the service is made, or from the place where the court has usually been held therein; for taking a bond of a plaintiff in replevin, or taking a bond on the arrest of a defendant, or in other cases where he is authorized to take the same, fifty cents; for a certified copy of such bond when requested, twenty-five cents; for a note of every capias delivered to a defendant on request, six cents; for a copy

Sundry fees.

Publication
fees.

Fees for
service of
execution.

of every summons, or declaration served by him, when made by the sheriff, six cents for each folio; for a copy of every other writ, when demanded or required by law, twenty-five cents; for serving an attachment for the payment of money, or an execution for the payment of money, or a warrant issued for the same purpose and delivered to him by the county treasurer or any supervisor, for collecting the sum of two hundred and fifty dollars or less, two and one-half per cent, and for any sum more than two hundred and fifty dollars, one and one quarter per cent; advertising goods or chattels, lands or tenements for sale, on any execution, if a sale be made, one dollar; and if the execution be stayed or settled after advertising and before sale, fifty cents. The fees allowed by law and paid to any printer by such sheriff for publishing an advertisement of the sale of real estate for not more than six weeks and for publishing the postponement of any such sale, the expense shall be paid by the party requiring the same. The fees herein allowed for the service of an execution and for advertising therein shall be collected by virtue of such execution, in the same manner as the sum therein directed to be levied; but when there shall be several executions against the defendant, at the time of advertising his property, in the hands of the same sheriff, there shall be but one advertising fee charged on the whole, and the sheriff shall elect upon which execution he will receive the same. For every certificate on the sale of real estate, fifty cents; and for each copy thereof, twenty-five cents, which, together with the register's fee for filing the same, shall be collected as other fees on execution; for drawing and executing a deed pursuant to a sale of real estate, one dollar; serving a writ of possession or of restitution, putting any person into possession of the premises and removing the occupant, one dollar, and the same compensation for traveling as is herein allowed on other writs; taking a bond for the liberties of the jail, fifty cents; summoning a jury upon a writ of inquiry, attending such jury, and making and returning the inquisition, one dollar and fifty cents; summoning a special jury struck pursuant to an order of the court, and returning the panel, one dollar and fifty cents; summoning a jury pursuant to any precept or summons of any officer in any special proceeding, one dollar, and for attending such jury, when required, fifty cents; bringing up a prisoner upon habeas corpus, one dollar, and for traveling each mile from the jail, thirteen cents; for attending any court with such prisoner, one dollar per day, besides actual necessary expenses; attending before any officer with a prisoner for the purpose of having him surrendered in exoneration of his bail, or attending to receive a prisoner so surrendered, who was not committed at the time, and receiving such prisoner into his custody in either case, one dollar; attending a view, when ordered by the court, one dollar and fifty cents per day, including the time occupied in going and returning; serving

an attachment upon any ship, boat or vessel, in proceedings to enforce any lien thereon, created by law, seventy-five cents, with such additional compensation for his trouble and expenses in taking possession of and preserving the same as the officer issuing the warrant shall certify to be reasonable; for making and returning an inventory and appraisal to the appraisers, one dollar for each day actually employed, and fifty cents for each half day; and for drafting the inventory, twenty-five cents for each folio, and for copying the same, six cents for each folio; for selling any ship, boat, or vessel, or the tackle, apparel or furniture thereof, so attached, and for advertising such sale, the same fees as for sales on executions; for giving notice for general or special election to the inspectors of the different townships and wards of his county, fifty cents for each township or ward, and the expenses of publishing such notices required by law, such fees and expenses to be paid by the county, as other contingent expenses thereof; for any services which may be rendered by a constable, the same fees as are allowed by law for such services to a constable; for attending the supreme court by the order of the court, two dollars and fifty cents for each day, to be allowed by the Auditor General on the certificate of the clerks, and paid out of the State treasury; for attending a circuit court, by the order of the court, two dollars for each day, except in the counties of Kent and Wayne. In the county of Kent, for attendance on the said circuit court shall be two dollars and fifty cents for each day, to be allowed and paid by the county in the same manner as other contingent charges of the county. In the county of Wayne on and after the first day of January, eighteen hundred and ninety-seven, there shall be paid to the deputy sheriffs in actual attendance on the circuit court in the said county the sum of one thousand dollars per annum, to be allowed and paid as other contingent charges of the county are paid: *Provided*, The number of said deputies shall not exceed two for each judge of said circuit. For summoning grand or petit jurors to attend the circuit court, fifty cents for each juror summoned; serving a subpoena for witnesses, fifteen cents for each witness summoned and ten cents for each mile actually traveled, in going only, but when two or more witnesses live in the same direction, traveling fees shall be charged only from the farthest; keeping and providing for debtor in jail in all cases where the debtor is unable to support himself, fifty cents for each day, to be paid by the creditor each week, in advance, and which sum the creditor shall be entitled to recover from the debtor; for mileage on every execution collected, ten cents per mile, for going only, to be computed from the court house of his county; for selling lands on the foreclosure of a mortgage by advertisement, and executing a deed to the purchaser and for all services required on such sale, three dollars. And any sheriff or other officer who shall demand or receive any greater fees or compensation for performing any

Attending
supreme
court.

Attending
circuit court.

Provided,
deputies
in court.

Penalty for
receiving
greater fees.

Liability
for refusal.

of the services hereinbefore mentioned than is hereinbefore allowed, shall, in addition to all other liabilities now provided by law, be liable to the party injured, or paying such illegal fees, in three times the amount so demanded, received or paid together with all costs of suit or prosecution; and any sheriff or other officer neglecting or refusing any of the services required by law, after the fees specified have been tendered, shall be liable to the party injured for all damages which he may sustain by reason of such neglect or refusal.

Fees of Witnesses.

For attend-
ance and
travel.

SEC. 3. For attending in any suit or proceeding pending in a court of record, one dollar for each day, and fifty cents for each half day. For traveling, at the rate of ten cents per mile in coming to the place of attendance, to be estimated from the residence of such witness, if within this State, or from the boundary line of this State, which such witness passed in coming, if his residence be out of the State.

Attorney not
allowed fee.

SEC. 4. No attorney or counsel in any cause in which he may be interested as attorney or counsel, shall be allowed any fee for attending as a witness in such cause.

Fees of Jurors.

Attendance
and travel.

SEC. 5. Each grand and petit juror and each talesman shall be entitled to receive three dollars for each day's attendance, and one dollar and fifty cents for each half day, upon any term of the circuit court, or before any court of record, and ten cents for each mile traveled in going and returning by the nearest traveled route, to be paid out of the county treasury of the county, on the certificate or order of the clerk or judge of such court.

CHAPTER XLIX.

Miscellaneous Provisions Relating to Fees of Officers.

Fees of Circuit Court Commissioners and Other Officers and Persons Authorized to Perform the Services Herein Enumerated.

Sundry fees.

SECTION 1. Circuit court commissioners shall be entitled to the following fees: For issuing a summons, warrant or attachment, for a party or witness to attend before him, fifty cents; for adjourning a cause or proceeding assigned for hearing, on request, fifty cents; for adjourning a cause or proceeding assigned for hearing, upon cause shown, one dollar; for attending and hearing a motion for an injunction, habeas corpus, special motion, or any other matter referred to him, and making his decision and order on the same, when contested, three dollars; if not contested, two dollars; for

taking an account of what is due on every mortgage, and the security accompanying the same, if any, and making his report thereof to the court, when contested, six dollars; and when not contested, three dollars; for drawing every report, and all schedules to be thereto annexed, in pursuance of an order of reference to him (except in case of reference to compute amount due on mortgage), twenty cents for each folio; for copies of reports, and all other proceedings furnished on request, ten cents for each folio; for examining into circumstances of sureties, and certifying his opinion to the court, two dollars; for appointing any person to appear as next friend for an infant, fifty cents; for inspecting and examining an infant or infants who want guardians appointed, inquiring who are willing to become guardians and into their competency, the proposed security, and the competency thereof, and certifying the facts to the court, three dollars—whether the same be for one or more infants in the same petition; for taking depositions of witnesses, ten cents for each folio; for drawing every advertisement of public notice of the sale of property, to be sold by him, two dollars; for posting notices of the sale of real estate, one dollar, and in addition thereto, ten cents a mile for traveling by the nearest traveled route; for attending at the time and place of sale, and adjourning the same, two dollars; and ten cents per mile, travel fees, both ways; for attending and making the sale, three dollars; and ten cents per mile travel fees, both ways; for executing the deed or deeds of real estate sold, two dollars for each deed necessarily executed; for making his report of such sale, when required to be made, and filing the same, fifteen cents for each folio; for settling the form of a deed to be executed under his direction by a third person, under a decree or order, one dollar; for superintending and certifying the payment of money, when paid under his direction by order, and having the same properly accepted, two dollars; but no fees to be allowed for the payment of money arising from sales to a party in the suit or into court; for examining into the circumstances and sufficiency of sureties, in every bond of recognizance entered into before him, and approving or rejecting the same, fifty cents; for taxing every bill of costs, including the bill of the officers of the court, and reporting the amount taxed, if approved, one dollar; if not approved, fifty cents; for every notice to any party, officer or person, required by law to be given, twenty-five cents; for administering an oath, twenty-five cents; for certifying each exhibit shown to a witness, twenty-five cents; for signing a judgment, twenty-five cents; for every precept for a jury, twenty-five cents; for taking and reducing to form every recognizance entered into before him, fifty cents; for drawing every complaint to obtain possession of premises, fifty cents; for every order for a commission to take testimony, fifty cents; for settling and certifying interrogatories to be annexed to a commission, one dollar; for every order for the examination

of witnesses, conditionally or upon proceedings to perpetuate testimony, fifty cents; for each day's attendance in taking such testimony, three dollars, and for each folio, ten cents; for presiding and conducting any trial by jury, receiving and entering the verdict or discharging the jury, or trying any issue in special proceedings without a jury, three dollars for each day while necessarily engaged in such trial; for receiving and filing the petitions and accompanying papers of an insolvent debtor, fifty cents; for every order, certificate, warrant or appointment of assignees in such proceedings, one dollar; for deciding on the propriety of directing the assignment of the estate of an insolvent debtor, three dollars; for taking the acknowledgment of any conveyance or mortgage of real estate or other instrument which may be recorded, twenty-five cents for the first person acknowledging, and ten cents for each additional person; and when the execution of any conveyance or mortgage of real estate or other instrument is proven by two witnesses, fifty cents; for taking surrender of principal in any cause, fifty cents; for committing such principal, fifty cents; for warrant of restitution to put any person or persons in possession of land or premises, one dollar; for making any order in any cause not herein specified, fifty cents; for all internal revenue stamps necessarily used in any case he shall be allowed and paid the actual cost of such stamps; when a commissioner is authorized to advertise in a newspaper, property for sale, or for parties to appear before him to prove debts or exhibit claims, he shall be allowed therefor the legal rates of advertising in such papers, what he shall legally pay; and when money is ordered to be put out by a commissioner, and when an estate is sold by a commissioner, under an order on them, the commissioner shall be allowed all necessary disbursements actually paid by him, and such further allowance by way of commission as the court shall direct, after notice thereof to the party to be charged therewith, but this shall not be construed to apply to sales of mortgaged premises; when a commissioner shall take an account of an estate, or of any administration thereof, or any account between parties in trade, or shall take any other account, (except upon mortgage) under decree or order not included in the foregoing provisions, or when extra services shall be rendered by a commissioner in taking or stating an account, the court may make such further allowance beyond the fees herein specified as under the circumstances may be just and reasonable, upon the notice of the party to be charged therewith; when any other person is authorized to perform any of the duties hereinbefore mentioned to be done or performed by a circuit court commissioner, such person shall be entitled to and receive the same fees as are hereinbefore allowed to circuit court commissioners for like services. Said commissioner shall have no fees for any services not herein specified.

No other fees.

Fees of Commissioners in Counties of Two Hundred Thousand Population.

SEC. 2. Before any action or proceeding for the recovery of possession of lands and buildings shall be commenced before circuit court commissioners, in counties having a population of two hundred thousand or more people, there shall be paid to the clerk of said commissioners, by the party bringing the same the sum of one dollar and fifty cents: *Provided*, That there is only one defendant to said action or proceeding. Should there be more than one defendant to such action or proceeding, the party bringing the same shall pay to said clerk an additional sum of one dollar for each additional defendant. The constable serving the summons in said action or proceeding shall receive for his services the sum of one dollar for each defendant served by him. And before any affidavit on appeal or writ of certiorari shall be served on either of said commissioners, in addition to the costs now provided by law for making returns to appeals on certiorari, the further sum of four dollars shall be paid to said clerk by the appellant or plaintiff in error, and the clerk therewith shall pay the entry fee in the circuit court and at the same time file therein the return to the appeal or certiorari, as the case may be. The moneys so paid shall be for the use of the said county and shall be held in full of all fees now allowed by law to said commissioners, from the commencement of such proceeding to and including the issuing of such final process as may be necessary to give effect to an order or judgment of such commissioner. The sum or sums so paid, including jury fees, shall be taxed as costs of suit in favor of the party paying the same if he be the prevailing party in the action in addition to any other to which he may be entitled by law. Any cause or proceeding pending before either of said commissioners in said county at the time this act goes into operation, shall be heard and disposed of according to the law and practice now in force.

In certain counties.

Proviso, only one defendant.

Moneys to be for use of counties.

Fees of Appraisers, Commissioners and Others.

SEC. 3. All appraisers of estates of deceased persons, commissioners to adjust claims against deceased persons, appraisers of property taken on any writ of attachment or replevin, persons appointed under any legal process or order for assigning dower or making partition of real estate, sheriffs' aids in criminal cases or in the execution of legal process, where no express provision is made for compensation therefor, shall be entitled to two dollars for each day and one dollar for each half day for their services, and six cents a mile for travel in going and returning: *Provided*, That appraisers of estates of deceased persons, commissioners appointed in probate court to set off dower or to make partition of the real estate, and commissioners appointed to adjust claims against deceased persons, shall have such further compensation as the

Appraisers, commissioners, etc.

Proviso, further compensation.

probate court, after such notice as such court shall direct to the parties interested in the premises, shall deem proper and by an order shall allow.

Fees for Publishing Legal Notices.

Publication of
legal notices.

SEC. 4. For publishing any legal notice, or any order, citation, summons, or any other proceedings or advertisement, required by law to be published in any newspaper, the cost of publishing such advertisement shall not exceed the rate of seventy cents per folio for the first insertion, and thirty-five cents per folio for each subsequent insertion.

General Provisions.

Special
provisions.

SEC. 5. The allowance of any fees by this chapter, shall not apply to any case where special provision is otherwise made by law for any particular service, but the fees for such service shall be such as are provided in the statute requiring the service, or providing the compensation therefor.

State officers
not required
to pay fees.

SEC. 6. The Secretary of State, Auditor General, Treasurer and Attorney General, respectively, shall be authorized to require searches in the respective offices of each other, and in the offices of the clerks of the supreme court, of the several circuit courts, or of registers of deeds, for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof, and extracts therefrom, without the payment of any fee or charge whatever.

"Folio"
defined.

SEC. 7. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used, as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio and when there shall be any excess over the last folio, shall be computed as a folio.

Extortion
prohibited.

SEC. 8. No judge of any court, justice, sheriff or other officer whatsoever, or other person to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, but such as is or shall be allowed by the laws of this State.

When fees not
to be taken.

SEC. 9. No fee or compensation allowed by law, shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him; but this section shall not prevent any officer from demanding any fee herein allowed for any service of which he is entitled by law to require the payment previous to rendering such service.

Penalty for
violation.

SEC. 10. A violation of either of the two last sections shall be deemed a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sus-

tained by him, and such violation shall be a cause for forfeiture of office.

SEC. 11. No fee shall be taxed for services as having been rendered by any attorney, clerk, sheriff, or other officer, in the progress of a cause, unless such service was actually rendered, except when otherwise expressly provided.

No fee for services not rendered.

SEC. 12. The legal fees paid for certified copies of the depositions of witnesses, filed in any clerk's office, and of any documents or papers, recorded or filed in any public office, necessarily used on the trial of a cause, or on the assessment of damages, shall be allowed in the taxation of costs.

Fees for certified copies.

SEC. 13. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for three times the amount so paid.

Receipt to be given for fees.

Penalty for refusal.

CHAPTER L.

Appeals to the Supreme Court in Actions at Law and in Chancery.

Writs of Error.

SECTION 1. Writs of error upon any final judgment or determination, may issue of course, out of the supreme court, in vacation as well as in term, and shall be returnable to the same court.

Writs of error may issue of course.

SEC. 2. No writ of error shall operate to stay or supersede the execution in any civil action, unless the appellant with two sufficient sureties, shall give bond to the appellee with condition that the appellant shall prosecute his writ to effect, and shall pay and satisfy such judgment as shall be rendered against him thereon: And *Provided*, That where such judgment is rendered in an action to recover the possession of lands, brought under the provisions of chapter thirty of this act, if the writ of error be sued out by the defendant in said action, said bond shall be in a penalty of not less than twice the amount of the annual rental value of the premises in dispute, and shall also in addition to the foregoing conditions contain a further condition, that if the plaintiff obtain restitution of said premises in said suit, the said defendant will forthwith pay all rent due or to become due, or the rental value thereof during the time the same has been detained by the defendant to the plaintiff for the premises described in the complaint, up to the time said plaintiff shall obtain possession thereof, together with the costs of suit in prosecuting said complaint and obtaining restitution of said prem-

Not to stay proceedings without bond.

Proviso, bond in actions under chapter 30.

Stay of
proceedings.

by writ of certiorari forthwith. Upon the issue of such writ the supreme court may, upon proper cause shown, stay the proceedings in the circuit court pending their decision on such writ. Or such decision may be reviewed by assignment of error under a writ of error sued out to review the final judgment in the cause in case such party shall plead over and a final judgment upon the merits shall be rendered against him.

Writ of
certiorari
allowed.

SEC. 15. Upon the filing of a petition for a writ of certiorari in such case, the same shall be allowed and the writ issued, unless the justice or justices considering the application shall affirmatively determine from a consideration of the petition for such writ, and the brief accompanying the same, that such petition does not present a meritorious question.

Costs.

SEC. 16. The party prevailing on a writ of certiorari in any proceeding of a civil nature, shall be entitled to his costs against the adverse party in all cases; and in case such writ shall appear to have been brought for the purpose of delay or vexation, the court may award double costs to the prevailing party.

Removal
to supreme
court of case
made.

SEC. 17. If either party shall wish to have any cause, which has been submitted to the court upon a case made, removed to the supreme court, the clerk of the circuit court shall, after judgment thereon, certify such case agreed upon, and the judgment thereon, to the supreme court, and the supreme court shall thereupon be possessed of the cause, and may give such judgment and award such costs as justice may require; and any case made after judgment in any circuit court, and agreed upon by the parties, or settled by the court, may be removed to the supreme court in like manner without a bill of exceptions or writ of error.

Of Chancery Appeals.

When appeal
may be made.

SEC. 18. Any plaintiff or defendant, who may consider himself aggrieved by an order sustaining or overruling any motion to dismiss, based on jurisdictional grounds, or issues which under the former practice would have been raised by demurrer, plea to the jurisdiction or other dilatory plea, or by the decree or final order of the circuit court in chancery, in any cause, may appeal therefrom to the supreme court: *Provided*, That when an appeal is taken from an order sustaining or overruling a motion to dismiss, the case shall, upon decision thereof by the supreme court, be remanded to the circuit court in chancery, and the plaintiff may amend his bill of complaint or the defendant may file his answer, as the case may be, within such time as the supreme court may prescribe, and the cause shall then be disposed of as though no appeal had been taken: *Provided further*, That where there are two or more defendants a portion of whom only moved to dismiss, all proceedings shall be stayed as to the other defendants, except filing and serving pleadings, until

Proviso, when
remanded to
circuit court in
chancery.

Further
proviso, stay
in certain
cases.

such motion is finally disposed of: *Provided further*, That no such appeal may be taken from an order denying a motion to dismiss, except upon an order signed by a justice of the supreme court allowing such appeal; but such appeal shall be allowed in all cases unless the justice or justices considering the application shall affirmatively determine that the petition for the allowance of such appeal does not present a meritorious question.

Further proviso, when appeal not allowed.

SEC. 19. Any party desiring to appeal from the order or decree of the circuit court in chancery shall, within twenty days after the entry of such order or decree, file or cause to be filed a claim of appeal in writing with the clerk of the court where such decree or order was entered, and shall also within the said twenty days pay a fee of five dollars to the clerk: *Provided*, That when any order or decree is entered in vacation, the time for taking an appeal shall be computed from the time of the service of notice of such decree as provided by law.

Claim of appeal.

Proviso, computation of time.

SEC. 20. The circuit court in which such decree or order was rendered or the judge of such court at chambers, or any justice of the supreme court may, upon cause shown and notice to the opposite party, extend the time for taking or perfecting any appeal: *Provided*, That the time for perfecting an appeal shall not be extended for more than one year from the entry of the order or decree appealed from: *Provided further*, That the time in which appeals may be taken and perfected may be extended, not exceeding six months from the expiration of the time herein specified, by the supreme court or one of the supreme court justices at chambers, when any party has been prevented from taking or perfecting such appeal by circumstances beyond his control. Such extension shall only be made on special motion and after a proper showing.

Extension of time for appeal.

Proviso, length of extension.

Further proviso, extension of six months.

SEC. 21. No appeal shall operate to stay proceedings in said cause, unless the party taking such appeal shall, within the time allowed for perfecting such appeal, file with the clerk of said court a bond to the appellee or appellees with sufficient surety or sureties to be approved by the circuit judge or a circuit court commissioner of said county or a justice of the supreme court, and with such penalty as such judge or commissioner shall approve, conditioned for the performance or satisfaction of the decree or final order of the supreme court in the cause, and payment of all costs of the appellee or appellees in the matter of the appeal. When the appeal is taken from a decree of foreclosure of a mortgage or land contract, the further condition of the bond shall be to pay to the appellee the damages which may result to the appellee from the stay of proceedings, in which damages the appellant shall be held to have contemplated the fair rental value of the premises affected, which damages in the case of foreclosure of land contract shall be computed as starting within six weeks from the date of the decree which may be appealed

Bond to stay proceedings.

from, and in foreclosure of mortgages, as starting seven months and two weeks from the date of said decree: *Provided, however,* That in no event shall such damages be awarded the appellee in said cause under such a bond in a greater amount than the amount of the deficiency reported by the circuit court commissioner on the final sale of said premises, if the order of sale be affirmed by the supreme court. Notice of the application for the approval of such bond shall be given to the appellee or appellees as on other motions, which notice shall contain the penalty and the names of the sureties of the proposed bond, and upon the hearing of said application such appellee or appellees shall be heard as to the sufficiency of the penalty named in and the responsibility of the sureties proposed to such bond: *Provided,* That in case such bond be approved by a circuit court commissioner, the circuit court in which such decree or final order was rendered or the judge of such court at chambers may on motion order an additional bond and fix the penalty therein and approve the sureties thereto: *Provided further,* That the supreme court or any justice thereof may on special motion and proper showing after such appeal has been perfected, order an additional bond and fix the penalty thereof and approve the sureties thereto.

Proviso,
damages
awarded.

Notice of
application
for approval
of bond.

Proviso,
approval by
circuit court
commissioner.

Further
proviso,
additional
bond.

Evidence,
how settled.

SEC. 22. The evidence, if any, taken on the hearing on said cause in open court or before a circuit court commissioner or by deposition or in any other manner, shall be settled for review in the same manner and within the same time as is provided by law or the rules of court for the settlement of bills of exceptions.

Stay of
proceedings.

SEC. 23. No stay of proceedings upon any final order or decree rendered in any circuit court in chancery shall hereafter be granted or allowed for the purpose of settling a case therein and taking and perfecting an appeal therefrom, for a longer period than twenty days from the entry of such decree or order, unless the party applying for such stay, if a decree shall have been rendered against him, shall execute to the adverse party a bond with sufficient surety or sureties in such sum as the circuit judge before whom the case was tried shall designate, conditioned for the performance and satisfaction of such decree or final order if the same be not set aside or reversed, and that if an appeal be taken from such decree or order, the appellant shall prosecute such appeal to effect, and shall perform and satisfy such decree as shall be rendered against him thereon. When the appeal is taken from a decree of foreclosure of a mortgage or land contract, the further condition of the bond shall be to pay to the appellee the damages which may result to the appellee from the stay of proceedings, in which damages the appellant shall be held to have contemplated the fair rental value of the premises affected, which damages in the case of foreclosure of land contract shall be computed as starting within six weeks from the date of the decree which may be appealed

Bond.

from, and in the foreclosure of mortgages, as starting seven months and two weeks from the date of said decree: *Provided, however,* That in no event shall such damages be awarded the appellee in said cause under such a bond in a greater amount than the amount of the deficiency reported by the circuit court commissioner on the final sale of said premises if the order of sale be affirmed by the supreme court. Notice of the time and place when such bond will be presented to the circuit judge for approval shall be served upon the adverse party as on other motions: *Provided,* That in case the party applying for such stay of proceedings shall be unable to give such bond by reason of poverty, the judge may upon due proof of inability for such reason grant such stay without requiring such bond, for such reasonable time as the judge may determine: *Provided further,* That no other or further bonds shall be required to stay proceedings upon any appeal from such decree or final order by or on behalf of the party filing such bond.

Proviso,
damages
under bond.

Notice of
approval.

Proviso,
inability to
give bond.

Further
proviso,
other bonds
not required.

SEC. 24. It shall be the duty of the clerk of such court, upon payment to him of the said sum of five dollars as his fees, by the appellant, to attach together the original bill, process, answer, and all other proceedings, processes, motions, notices, orders and decrees which have been filed in said cause, together with the testimony as settled in the said cause, and also a copy of all journal and calendar entries and all other proceedings of record in the cause not embraced in the original papers hereinbefore mentioned, and transmit the same, together with his certificates of the genuineness of the said originals and the correctness of said copies of such journal and calendar entries and records, to the supreme court within fifteen days after such appeal shall be perfected. Such appeal shall be deemed to be perfected, upon the filing of the claim of appeal, and payment of the clerk's fee, as hereinbefore provided, unless it shall be necessary to settle a case. In such event, said appeal shall be deemed to be perfected when such case shall be settled and signed.

Duty of clerk.

SEC. 25. Upon any order or decree of the circuit court in chancery being brought by appeal to the supreme court, that court shall examine all errors that may be assigned or found in such order or decree, and shall hear and determine such appeal, and all matters concerning the same, and shall have power to reverse, affirm or alter such order or decree, and to make such other order or decree therein as shall be just.

Action of
supreme
court.

SEC. 26. When an appeal shall have been so heard and determined, the records and files sent from the circuit courts in chancery, together with the proceedings and decree or order of the supreme court therein, and all things concerning the same shall be remitted to the circuit court in chancery, for the proper county, when such further proceedings shall be thereupon had as may be necessary to carry such decree or order into effect.

Records, etc.,
to be re-
mitted to
circuit court
in chancery.

from, and in foreclosure of mortgages, as starting seven months and two weeks from the date of said decree: *Provided, however,* That in no event shall such damages be awarded the appellee in said cause under such a bond in a greater amount than the amount of the deficiency reported by the circuit court commissioner on the final sale of said premises, if the order of sale be affirmed by the supreme court. Notice of the application for the approval of such bond shall be given to the appellee or appellees as on other motions, which notice shall contain the penalty and the names of the sureties of the proposed bond, and upon the hearing of said application such appellee or appellees shall be heard as to the sufficiency of the penalty named in and the responsibility of the sureties proposed to such bond: *Provided,* That in case such bond be approved by a circuit court commissioner, the circuit court in which such decree or final order was rendered or the judge of such court at chambers may on motion order an additional bond and fix the penalty therein and approve the sureties thereto: *Provided further,* That the supreme court or any justice thereof may on special motion and proper showing after such appeal has been perfected, order an additional bond and fix the penalty thereof and approve the sureties thereto.

Proviso,
damages
awarded.

Notice of
application
for approval
of bond.

Proviso,
approval by
circuit court
commissioner.

Further
proviso,
additional
bond.

Evidence,
how settled.

SEC. 22. The evidence, if any, taken on the hearing on said cause in open court or before a circuit court commissioner or by deposition or in any other manner, shall be settled for review in the same manner and within the same time as is provided by law or the rules of court for the settlement of bills of exceptions.

Stay of
proceedings.

SEC. 23. No stay of proceedings upon any final order or decree rendered in any circuit court in chancery shall hereafter be granted or allowed for the purpose of settling a case therein and taking and perfecting an appeal therefrom, for a longer period than twenty days from the entry of such decree or order, unless the party applying for such stay, if a decree shall have been rendered against him, shall execute to the adverse party a bond with sufficient surety or sureties in such sum as the circuit judge before whom the case was tried shall designate, conditioned for the performance and satisfaction of such decree or final order if the same be not set aside or reversed, and that if an appeal be taken from such decree or order, the appellant shall prosecute such appeal to effect, and shall perform and satisfy such decree as shall be rendered against him thereon. When the appeal is taken from a decree of foreclosure of a mortgage or land contract, the further condition of the bond shall be to pay to the appellee the damages which may result to the appellee from the stay of proceedings, in which damages the appellant shall be held to have contemplated the fair rental value of the premises affected, which damages in the case of foreclosure of land contract shall be computed as starting within six weeks from the date of the decree which may be appealed

Bond.

from, and in the foreclosure of mortgages, as starting seven months and two weeks from the date of said decree: *Provided, however*, That in no event shall such damages be awarded the appellee in said cause under such a bond in a greater amount than the amount of the deficiency reported by the circuit court commissioner on the final sale of said premises if the order of sale be affirmed by the supreme court. Notice of the time and place when such bond will be presented to the circuit judge for approval shall be served upon the adverse party as on other motions: *Provided*, That in case the party applying for such stay of proceedings shall be unable to give such bond by reason of poverty, the judge may upon due proof of inability for such reason grant such stay without requiring such bond, for such reasonable time as the judge may determine: *Provided further*, That no other or further bonds shall be required to stay proceedings upon any appeal from such decree or final order by or on behalf of the party filing such bond.

Proviso,
damages
under bond.

Notice of
approval.

Proviso,
inability to
give bond.

Further
proviso,
other bonds
not required.

SEC. 24. It shall be the duty of the clerk of such court, upon payment to him of the said sum of five dollars as his fees, by the appellant, to attach together the original bill, process, answer, and all other proceedings, processes, motions, notices, orders and decrees which have been filed in said cause, together with the testimony as settled in the said cause, and also a copy of all journal and calendar entries and all other proceedings of record in the cause not embraced in the original papers hereinbefore mentioned, and transmit the same, together with his certificates of the genuineness of the said originals and the correctness of said copies of such journal and calendar entries and records, to the supreme court within fifteen days after such appeal shall be perfected. Such appeal shall be deemed to be perfected, upon the filing of the claim of appeal, and payment of the clerk's fee, as hereinbefore provided, unless it shall be necessary to settle a case. In such event, said appeal shall be deemed to be perfected when such case shall be settled and signed.

Duty of clerk.

SEC. 25. Upon any order or decree of the circuit court in chancery being brought by appeal to the supreme court, that court shall examine all errors that may be assigned or found in such order or decree, and shall hear and determine such appeal, and all matters concerning the same, and shall have power to reverse, affirm or alter such order or decree, and to make such other order or decree therein as shall be just.

Action of
supreme
court.

SEC. 26. When an appeal shall have been so heard and determined, the records and files sent from the circuit courts in chancery, together with the proceedings and decree or order of the supreme court therein, and all things concerning the same shall be remitted to the circuit court in chancery, for the proper county, when such further proceedings shall be thereupon had as may be necessary to carry such decree or order into effect.

Records, etc.,
to be re-
mitted to
circuit court
in chancery.

Miscellaneous Provisions.

Bond not
required of
state, etc.

SEC. 27. In any suit or proceeding in which the State, or any State officer duly authorized for that purpose, or any corporate body in charge of any State institution, or any municipal corporation, is a party, no bond shall be required to be given by any such party as a prerequisite to the issuance of a writ of error or the taking of an appeal, or the making of an order staying proceedings.

When
judgment,
etc., not to be
set aside, etc.

SEC. 28. No judgment or verdict shall be set aside or reversed, or a new trial be granted by any court in any civil case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

CHAPTER LI.

Powers and Jurisdiction of Probate Courts.

Jurisdiction
of probate
courts.

SECTION 1. Each judge of probate shall have jurisdiction:

1. Of all matters relating to the settlement of the estates of all deceased persons, whether testate or intestate, who were at the time of their decease inhabitants of, or residents in his county, and of all who shall die without the State leaving any estate within such county to be administered;

2. Of trusts and trustees in the execution of wills and administration of estates of deceased persons;

3. To appoint guardians to minors and others in the cases prescribed by law, and of the settlement of the estates of such minors and others under guardianship;

4. Of all cases of juvenile delinquents and dependents;

5. And shall have and exercise all such other powers and jurisdiction as are or may be conferred by law;

6. And to that end he may, upon the filing in said court of a petition therein, within ninety days of the original hearing, or of the rendering or making of any order, sentence or decree, as the case may be, and after due notice to all parties interested, grant rehearings, and may modify and set aside orders, sentences and decrees rendered in such court: *Provided, however,* That the jurisdiction conferred by this section shall not be construed to deprive the circuit court in chancery in the proper county of concurrent jurisdiction as originally exercised over the same matter.

Proviso,
concurrent
jurisdiction
of chancery
courts.

Powers of
probate judge.

SEC. 2. Each judge of probate shall have power:

1. To administer all oaths necessary in the transaction of business before the probate court, and all oaths required by law to be administered to persons executing trusts under the appointment of such court;

2. To issue all warrants and processes in conformity to the rules of law, which may be necessary to compel the attendance of witnesses residing in any part of this State, or to carry into effect any order, sentence or decree of the probate courts, or the powers granted them by law, and to issue warrants directed to any sheriff, constable or other proper officer in this State, requiring him to apprehend and imprison any person who shall refuse or neglect to perform any order, sentence or decree of a probate court, requiring such officer to apprehend and imprison such person in the common jail of the county, until he shall perform such orders, sentence or decree, or be delivered by due course of law; and all such officers shall serve and execute all legal warrants and processes to them directed by any judge of probate;

3. To keep order in his court, and to punish any contempt of his authority, in like manner as such contempt may be punished in the circuit court;

4. And shall have such other powers as may be conferred by law.

SEC. 3. Jurisdiction assumed in any case by a judge of probate, so far as it depends on the place of residence of any person, or the location of his estate, shall not be contested in any suit or proceeding whatever, except in an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

When jurisdiction not to be contested.

SEC. 4. When a case shall be originally within the jurisdiction of the probate court of two or more counties, the court which shall first take cognizance thereof by the commencement of proceedings, shall retain the same throughout.

Court first taking cognizance to retain jurisdiction.

General Provisions.

SEC. 5. When the validity of any order or decree of a probate court shall be drawn in question in any other suit or proceeding, everything necessary to have been done or proved to render the order or decree valid, and which might have been proved by parol at the time of making the order or decree, and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved, unless the contrary appears on the same record.

Presumption of validity of proceedings.

SEC. 6. All oaths required to be taken by executors, administrators, guardians, trustees, commissioners, appraisers, and dividers of estates, or by any other person in relation to any proceeding in the probate court, may be administered by the judge of probate, register of probate, any justice of the peace or notary public, and a certificate thereof shall be returned and filed in the probate court.

Oaths, by whom may be administered.

SEC. 7. Any warrant or commission for the appraisement of any estate, for examining claims against estates, for partition of real estate, or for the assignment of dower, may be revoked by the judge of probate for sufficient cause, and the judge may thereupon issue a new commission, or proceed otherwise therein, as the circumstances of the case shall require.

Revocation of certain warrants, etc.

Security
for costs.

SEC. 8. The judge of probate may, when it shall appear reasonable and proper, require either party to any proceeding before him to give sufficient security for all such costs as may be awarded against him.

When
personal
estate may be
ordered sold.

SEC. 9. The probate court on the application of the executor or administrator, may, at any time, order the personal estate to be sold at private sale or at public auction, when it shall appear to be necessary for the purpose of paying debts or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this State; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order be to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

CHAPTER LII.

Of the Probating of Wills.

Deposit of
will with
probate
judge.

SECTION 1. Any will in writing, being inclosed in a sealed wrapper, and having indorsed thereon the name of the testator and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

How
delivered.

SEC. 2. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate and be retained by him.

When opened.

Notice to be
given of will.

SEC. 3. The judge of probate shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the will; or if the jurisdiction of the case belongs to any other court, such will shall be delivered to the executor, or to some other trusty person interested in the provisions of the same, to be presented for probate in such other court.

When other
custodian of
will to deliver
same.

SEC. 4. Every person other than the judge of probate, having the custody of any will, shall, within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court, which has jurisdiction of the case, or to the person named in the will as executor.

When
executor to
present will
to court.

SEC. 5. Every person named as executor in any will shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator,

present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate; and shall, within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

SEC. 6. Every person who shall neglect to perform any of the duties required in the two last preceding sections, without reasonable cause, shall be liable to each and every person interested in such will, in the sum of ten dollars damages for each and every month he shall so neglect after the thirty days above mentioned, to be recovered in an action on the case, with costs.

Liability
for neglect
of duty.

SEC. 7. If any person, having the custody of any will, after the death of the testator, shall, without reasonable cause, neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed.

Commitment
for neglect
to deliver will.

SEC. 8. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by service as provided in section nine of this chapter; and no will shall be proved until notice shall be given as herein provided.

Probate of
will.

Notice of
time and
place.

SEC. 9. Except as otherwise provided by law, all probate and other legal notices required by law or by the probate judge of any county to be served upon any interested party may be served as the court shall direct, either by delivering a copy of the same, at least fourteen days before the day of hearing, personally to such party, if he can be found within the county, or by publication once in each week for three successive weeks in some newspaper printed and circulating in the county where said probate judge holds court, if there be one printed and circulating in said county; and in case there be no newspaper printed and circulating in said county, then in some newspaper published in an adjoining county and circulating in the county where the proceedings are pending: *Provided, however,* That if an attorney shall have entered his appearance in writing for any party in any matter pending in said court, all notices required to be given to said party in said matter may be served on said attorney.

Service
of notices.

Proviso.
service on
attorney.

SEC. 10. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all particulars as required by law.

Probate on
testimony
of one
witness.

When other witnesses may prove will.

SEC. 11. If none of the subscribing witnesses shall reside in this State, at the time appointed for proving the will, the court may, in its discretion, admit the testimony of other witnesses to prove the execution of the will; and as evidence of the execution of the will, may admit proof of the handwriting of the testator and of the subscribing witnesses.

Will not effectual until proved, etc.

SEC. 12. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court as provided in this chapter, or on appeal, in the circuit court or supreme court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Probate conclusive as to execution.

Probate by exemplified copy.

SEC. 13. Any will duly admitted to probate without the probate court of any county in this State in which the testator left real or personal estate, and in the place of the testator's domicile may be duly admitted to probate and recorded in this State by duly filing an exemplified copy of said will and of the record admitting the same to probate; and proceeding in the manner hereinafter provided.

Effect of allowance.

SEC. 14. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this State, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Letters testamentary, etc., on will.

SEC. 15. When any will shall be allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary, or letters of administration, with the will annexed; and such letters testamentary or letters of administration shall extend to all of the estate of the testator in this State; and such estate, after payment of his just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue shall be disposed of as is provided by law in cases of estates in this State, belonging to persons who are inhabitants of any other state or country.

Lost, destroyed or suppressed will, probate of.

SEC. 16. Whenever it is proposed to establish an alleged lost, destroyed or suppressed last will and testament, the petition filed in the probate court praying for the probate of such alleged will, shall contain a full and complete statement of the contents of such alleged will, so far as the same can be ascertained, which shall disclose the names of the subscribing witnesses, if known, and if living, their place of residence, together with the names and residences of all known persons who have personal knowledge of the execution of said alleged will and the contents thereof. No such alleged will shall be admitted to probate unless and until its due execution and the contents thereof shall be established by at least two reputable witnesses.

Revoking clause, etc., of will, how established.

SEC. 17. No revoking clause in any alleged, lost, destroyed or suppressed will, and no alleged disposition of property, terms or conditions contained therein, claimed to be incon-

sistent with a former will which has been produced for probate, shall be sufficient to defeat or destroy the effect of such former will, unless the legal execution of said alleged, lost, destroyed or suppressed will, together with the fact that it contained such revoking clause or such inconsistent disposition of property, terms or conditions, shall be established by at least two reputable witnesses, having knowledge thereof.

SEC. 18. When any child shall be born after the making of his father's or his mother's will and no provision shall be made therein for such child, he or she shall have the same share in the estate of the testator as if the parent had died intestate. And the share of such child shall be assigned to him as provided by law in case of intestate estates, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

Provision for child born after will made.

SEC. 19. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

When provision for child omitted by mistake, etc.

SEC. 20. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will would thereby be defeated; in which case, such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

From what estate provision to be taken.

SEC. 21. When a devise or legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done, if he had survived the testator; unless a different disposition shall be made or directed by the will.

Issue of deceased legatee, etc., to take estate.

SEC. 22. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts, and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his estate, during the progress of the settlement of the estate, but never for a longer period than

Payment of debts, etc., and allowance for family.

until their shares in the estate shall be assigned to them, nor for more than one year.

When
testator
provides by
will for debts
and family
expenses.

SEC. 23. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

Insufficiency
of provision.

SEC. 24. If the provision made by will, or the estate appropriated, shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate given
by will liable
for debts,
expenses, etc.

SEC. 25. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary, in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

Specific
devises may
be exempted.

Retention of
estate by
executor,
pending
settlement
of liability.

SEC. 26. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child, or of the issue of a child not provided for in the will as hereinbefore provided, the executor shall have a right to retain possession of the same, until such liability shall be settled by order of the probate court, and until the devises and legacies so liable shall be accordingly assigned by order of such court; and when the same can properly be done, any devisee, or legatee, may make his claim to such court, to have such liability settled, and his devise or legacy assigned to him.

Contribution
by devisees
and legatees.

SEC. 27. All the devisees and legatees, who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will before such liability shall be settled by the probate court, shall hold the same subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will as provided in this chapter, shall be liable to contribute, in like manner as the devisees or legatees.

Liability
in case of
insolvency
of any legatee,
etc.

SEC. 28. If any of the persons liable to contribute according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be sev-

erally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of, the estate they may have received; and if any of the persons so liable to contribute, shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

SEC. 29. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy in any proper action or complaint in law or equity.

Settlement of liabilities.

SEC. 30. Every will, when proved as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate, and attested by his seal, and every will so certified, and the record thereof, or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this State, without further proof.

Probated will, how made evidence.

SEC. 31. An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be recorded in the office of the register of deeds of the county in which the lands thereby devised are situated; and it shall be the duty of the judge of probate to cause such registration to be made, and the expense thereof shall be a charge against the estate, and shall be paid in the same manner as other expenses of administration are.

Record in office of register of deeds.

SEC. 32. The word "executor," in this act, shall be construed to include an administrator with the will annexed.

"Executor" to include "administrator," etc.

SEC. 33. All dispositions of personal property by last will and testament shall be subject to the following limitations and restrictions:

Disposition of personal property, how limited.

1. If the testator shall leave surviving him, a wife, the testamentary disposition shall be subject to the election of such wife, to take any interest that may be given to her, by the testator in his last will and testament; or in lieu thereof, to take the sum or share that would have passed to her, under the statute of distributions, had the testator died intestate, until the sum shall amount to five thousand dollars, and of the residue of the estate one-half the sum or share that would have passed to her under the statute of distributions, had the testator died intestate, and in case no provision be made for her in said will, she shall be entitled to the election aforesaid;

2. If by any will, any special devise or bequest is made to the wife in lieu of any particular thing or any particular interest, to which such wife might be entitled, in case of intestacy, the election by the wife to take the special devise or bequest, or the other particular thing or interest, in lieu of which it is given, shall not deprive the party electing, or any other person, of the right to leave the testamentary disposition of property in all other respects unaffected and unim-

paired; and to have the benefit of any other provisions therein, the same as he or she would have had, if this act had not been passed.

Election to be
in writing
and filed.

SEC. 34. The election to take otherwise than under the will, in any contingency above contemplated, shall be made in writing, and filed in the court in which proceedings for the settlement of the estate are being taken, within one year from the probate of the will; and the failure to file such election within the time above provided shall be deemed an election to take under the will.

Copy of will
attached to
letters testa-
mentary.

SEC. 35. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon, to the person named executor therein, if he is legally competent, and shall accept the trust, and give bond as required by law, and a copy of such will shall be annexed thereto: *Provided, however,* That no extra fee shall be charged therefor.

Proviso,
no fees.

Bond of
executor.

SEC. 36. Every executor, before he shall enter upon the execution of his trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows:

1. To make and return to the probate court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him;

2. To administer, according to law and to the will of the testator all his goods, chattels, rights, credits and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies and charges, chargeable on the same, or such dividends thereon, as shall be ordered and decreed by the probate court;

3. To render a true and just account of his administration to the probate court within one year, and at any other time when required by such court;

4. To perform all orders and decrees of the probate court, by the executor to be performed in the premises.

Bond when
executor is
residuary
legatee.

SEC. 37. If, however, the executor named in any last will and testament, or the administrator with the will annexed of any estate duly appointed shall be residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond in such sum and with such sureties as the court shall direct, with a condition only to pay all the debts and legacies of the testator.

When person
named
executor
not to act.

SEC. 38. No person named as executor in any will, who shall refuse to accept the trust or shall neglect to give bond as prescribed in this chapter, for fifteen days after the probate of such will, shall act as executor.

SEC. 39. If a person named executor in any will shall refuse to accept the trust, or shall, for the space of fifteen days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the court may commit administration of the estate with the will annexed to any of the beneficiaries named in said will if capable, or to such person as would have been entitled to the same if the testator had died intestate.

When executor fails to qualify, letters granted to others.

SEC. 40. When the person named executor in any will, is under full age at the time of proving the will, administration shall be granted, with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust, and give bond; and, in that case, the executor who shall give bond, shall have letters testamentary, and shall administer the estate, until the minor shall arrive at full age, when he may be admitted as joint executor, on giving bond according to law.

When executor under age.

SEC. 41. Every person who shall be appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in the same manner and with the same conditions, as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

Administrator with will annexed to give bond, etc.

SEC. 42. If an executor shall reside out of this State, or shall neglect, after due notice given by the judge of probate to render his account and settle the estate according to law, or to perform any decree of the court, or shall abscond or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

Removal of executor.

SEC. 43. When an executor shall die or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and if there shall be no other executor, administration, with the will annexed, may be granted of the estate not already administered.

When remaining executor to execute trust, etc.

SEC. 44. When all the executors appointed in any will shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose, as if all were authorized, and should act together; and administrators with the will annexed, shall have the same authority to perform every act, and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for every purpose.

When all executors not authorized, those authorized may execute will.

SEC. 45. The executor of an executor shall not, as such, have any authority to administer the estate of the first testator; but, on the death of the only surviving executor

Executor of executor not to act.

of any will, administration of the estate of the first testator, not already administered, may be granted with the will annexed, to such person as the probate court may judge proper.

Separate or
joint bonds.

SEC. 46. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them with sureties, or a joint bond from all of them with sureties.

CHAPTER LIII.

Of the Appointment of Administrators.

What court
to have
jurisdiction.

SECTION 1. When any person shall die intestate, being an inhabitant of this State, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant, or resident at the time of his death; if such deceased person, at the time of his death, resided in any other state or country, leaving estate to be administered in this State, administration thereof shall be granted by the probate court of any county in which there shall be estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this State, and shall exclude the jurisdiction of the probate court of every other county.

Who entitled
to letters of
adminis-
tration.

SEC. 2. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order:

1. The widow, husband or next of kin, or a grantee of the interest of one or more of them, or such of them as the judge of probate may think proper, or such person or persons as the widow, husband, next of kin or grantee may request to have appointed, if suitable and competent to discharge the trust;

2. If the widow, husband, next of kin or grantee, or the person selected by them shall be unsuitable or incompetent, or if the widow, husband, next of kin or grantee shall neglect for thirty days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it;

3. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

Bond by
administrator

SEC. 3. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in the case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

SEC. 4. When by reason of delay in granting letters testamentary or of administration, or when from any other cause the judge of probate deems it expedient so to do, he may, after such notice as he may direct, or without notice in his discretion, appoint an administrator to act in collecting and taking charge of the estate of the deceased until an executor or administrator shall be appointed; and no appeal shall be allowed from the appointment of such special administrator.

Special administrator.

SEC. 5. An administrator appointed according to the provisions of the preceding section shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who may afterwards be appointed, and for that purpose may commence and maintain actions as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold. All personal actions, the cause of which does by law survive and which may be pending either for or against the intestate of such special administrator, may be proceeded with and be prosecuted by or against such special administrator, and the same proceedings taken as are or may hereafter be provided by law relating to such actions in cases where an executor or general administrator has been appointed.

Duties of special administrator.

SEC. 6. Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased, except, on special application of any creditor, the judge of probate may for special reasons, on the usual notice in such cases, allow any one or all claims against such estate, to be proved before him; and, if so proved, said judge of probate may order and direct the payment by said special administrator of all or any such claims so allowed by him; and said judge may for special reasons on the usual notice also order and direct the payment, after the time for appeal shall have expired, by said special administrator of all or any claims otherwise properly allowed by commissioners against said deceased and said estate: *Provided*, That in no case shall the judge of probate direct the payment by the special administrator of any but preferred claims, provided for by statute.

When special administrator to pay claims.

Proviso, preferred claims.

SEC. 7. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts and effects of the deceased which shall be received by him whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

Bond by special administrator.

SEC. 8. Upon granting letters testamentary or of adminis-

When his powers to cease.

tration on the estate of the deceased, the power of such special administrator shall cease; and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

Liability for
embezzle-
ment, etc.,
before letters
granted.

SEC. 9. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, such person shall stand chargeable and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

Death of sole
executor, etc.

SEC. 10. When any sole executor or administrator shall die, without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered.

Removal of
administrator.

SEC. 11. If an administrator shall reside out of this State, or shall neglect, after due notice by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable or incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator, and every executor and administrator, upon his request, may be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same: *Provided*, Such executor or administrator shall, prior and up to the time of his resignation, settle and adjust his accounts with the estate of which he may be executor or administrator: *Provided further*, That the sureties of such executor or administrator shall not be released from liability until such executor or administrator shall have fully settled and adjusted his accounts as aforesaid.

Resignation.

Proviso,
settlement
of accounts.

Further
proviso,
sureties not
released.

When ad-
ministrator
removed.

SEC. 12. When an administrator shall be removed, or his authority shall be extinguished, the remaining administrator, if any, may execute the trust; if there shall be no other, the court of probate may commit administration of the estate not already administered to some suitable person, as in case of the death of a sole administrator.

Adminis-
trator ap-
pointed,
powers of.

SEC. 13. An administrator, appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers, and shall proceed in settling the estate in the same manner, as the former executor or administrator should have had or done; and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

SEC. 14. If, after the granting of letters of administration by any probate court, on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration, within such time as the court shall direct.

Adminis-
tration to be
revoked on
proof of will.

SEC. 15. The executor of the will shall, in such case, be entitled to demand, sue for and collect all the goods, chattels, rights and credits of the deceased, remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator, before the revocation of his letters of administration.

Powers of
executor in
such case.

SEC. 16. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

Acts of prior
executor
valid.

SEC. 17. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each with sureties, or a joint bond, with sureties from all.

Adminis-
trators may
give joint or
separate bond.

SEC. 18. When application shall be made to the judge of probate for the appointment of an administrator on an intestate estate, or for letters of administration with the will annexed, or administration de bonis non he shall cause notice of the same, and of the time and place of hearing thereof, to be given as provided by section nine of chapter fifty-two of this act.

Application
for adminis-
trator of
intestate
estate.

SEC. 19. Whenever it shall appear upon application to any probate court for letters of administration, or to prove the will of any deceased person, that the heirs at law of said deceased, or any of them, are residents of a foreign country, it shall be the duty of the judge of such probate court to notify the consul of such foreign nation in the city of New York, or the consul, vice-consul, or consular agent, resident in this State, if there be one of such foreign nation, of the pending of, and the day appointed for hearing such application. And such notice may be given by letter addressed to such consul, vice-consul, or consular agent, and deposited in the postoffice, with the postage prepaid thereon, at the city or village where such application was made, at least sixty days before such day of hearing, unless such heir or heirs shall file in such probate court a waiver of such notice, in writing and under oath.

Probate judge
to notify
foreign
consuls in
certain cases.

Notice,
how given.

SEC. 20. Whenever a petition for administration is filed in any probate court of this State, praying for the appointment of an administrator of the estate of any deceased person, and from which petition it appears that the decedent died intestate leaving no known heirs; or whenever it shall appear during the course of administration of any intestate estate

When notice
to be served
on attorney
general.

that the decedent left no known heirs; or whenever a petition is filed praying for the administration of the estate of a testate decedent and from which it appears that the beneficiaries of the purported will referred to would not be entitled to share in such estate but for the terms of such purported will, and that such decedent died leaving no known natural heirs, it shall be the duty of the judge of said court to forthwith serve notice upon the Attorney General of this State of the pendency of such proceedings and of the fact that in such estate there are no known natural heirs. Such notice shall be served by registered mail. Upon entering his appearance in such estate, the Attorney General shall be entitled to like written notice of the hearing of claims, whether before the court or before commissioners.

How served.

Rights of attorney general.

SEC. 21. In any such case, the Attorney General, representing the State, shall have all the rights of any heir, representative or creditor to be heard and to contest the validity of any claim, order, appointment or any instrument purporting to be a contract or will of the decedent, and shall have all the rights granted or accruing to heirs, representatives or creditors under the laws of the State relating to the settlement of estates of either testates or intestates, either in such probate court or by way of appeal.

Appointment of temporary administrator.

SEC. 22. If any person shall be missing or absent from his usual place of residence in this State, and his whereabouts unknown, for the space of three months or more, and shall leave property which is going to waste or is in danger of being destroyed or lost for the want of a proper custodian, the judge of probate of the county in which he was last known to reside, shall have power, upon the application or petition of the wife or next of kin, or of one or more of his principal creditors, which petition shall state the facts of the case as known, and be verified by the oath of the applicant, to appoint a temporary administrator to collect and take charge of the estate of the person so missing or absent, until the fact of his death or survival can be satisfactorily established, and in case of his death, until the question of the allowance of his will, if any, shall be determined, and an executor or administrator, or special administrator, shall be appointed and qualify.

Bond of temporary administrator.

SEC. 23. Such temporary administrator shall, before entering upon his trust, give a bond, as prescribed by law for other administrators, and shall, during his term of office, have such general powers as, and perform similar duties with, special administrators as provided for by law. From the appointment of such temporary administrator there shall be no appeal, except by parties claiming an interest in the property of the absent person either as creditor, heir, legatee, owner or custodian: *Provided*, That no temporary administrator shall be appointed until after a hearing duly appointed before such judge of probate, and previous notice of such hearing shall be published once each week for three successive

Powers and duties.

Proviso, notice and hearing before appointment.

weeks in some newspaper in the county where such hearing is to be had.

SEC. 24. When application shall be made to the judge of probate for the appointment of an administrator on an intestate estate, such petition may contain in addition to other matters therein required to be set forth, the following:

Petition for administrator of intestate estate.

1. A true and complete inventory of the estate of said deceased, appraised under oath by one or more freeholders of the county at its true cash value;

2. A bond running to the judge of probate in the penal sum of not less than three hundred dollars, with such surety or sureties as the judge of probate may approve, conditioned for the payment of the funeral expenses of said deceased, within one year from the date of death of such deceased.

SEC. 25. Upon receiving and filing such petition, the judge of probate may make such investigation of the circumstances of the case and the facts set up in such petition, as he deems proper and necessary, and if from such petition and such investigation it shall appear to the satisfaction of the court that said deceased left surviving him a widow, or children under the age of sixteen years, or both; that said deceased died seized of no real estate, and that the personal estate of such deceased, appraised at its true cash value, amounts to less than the sum of five hundred dollars, the court may thereupon grant administration of said estate to such petitioner or some other suitable person forthwith without further notice, and may issue letters of administration to such administrator without requiring further bonds.

Judge may investigate circumstances.

Letters of administration.

SEC. 26. Whenever it shall appear to the satisfaction of the judge of probate that an administrator appointed under the provisions of the two last preceding sections, has paid or caused to be paid the funeral expenses of said deceased, and has paid over to the widow of said deceased, or in case there shall be no widow, to the guardian of the minor children of said deceased, all the balance and residue of said estate, the court may forthwith discharge such administrator without further accounting and without notice.

Discharge.

CHAPTER LIV.

Of the Inventory and Collection of the Effects of Deceased Persons.

SECTION 1. Every executor or administrator shall, within thirty days after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased which shall have come to his possession or knowledge.

Making and return of inventory.

SEC. 2. The estate and effects comprised in the inventory shall be appraised by two or more disinterested persons, appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust; and if any

Appraisal.

Proviso, when
no appraisal.

part of such estate or effects shall be in any other county, appraisers thereof may be appointed either by the judge of probate having jurisdiction of the case, or by the judge of probate of such other county: *Provided*, That when the assets of such estate shall consist entirely in money, no appraisal thereof shall be made.

Order of ap-
praisement.

SEC. 3. When appraisers shall be appointed by the judge of probate of such other county, he shall issue an order to them in substance as follows:

County of, ss.

To, of in said county:
You are hereby appointed to appraise on oath the estate and effects of, late of deceased, which may be in said county; and when you have performed that service you are required to deliver this order, and your doings in pursuance thereof, to, executor (or administrator as the case may be) of said deceased.

Given under my hand this day of
....., in the year

.....
Judge of Probate.

Appraisal,
how made.

SEC. 4. The appraisers shall set down opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same, certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator.

Personal
estate first
chargeable
with payment
of debts.

SEC. 5. The personal estate of the deceased, including all growing crops of grain, grass, and fruit not disposed of by special mention in the will of the deceased, and by said will plainly directed to pass with the real estate, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator shall not be sufficient to pay the debts of the deceased and the expenses of the administration, the whole of his real estate, except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining license therefor in the manner provided by law.

If not
sufficient,
real estate
may be sold.

Executor
to have
possession
of all real
estate.

SEC. 6. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may lease the same from year to year, and cancel or modify any existing lease or leases given by the deceased in the same manner that the deceased might have done in his lifetime, and may receive the rents, issues, and profits of the real estate until the estate shall have been settled, or until delivered over by order of the probate court to the heirs or devisees; and shall keep in good tenantable repair all houses, buildings, and fences thereon, which are under his

control: *Provided*, That whenever, on application of the heirs, or devisees, or any of them, it shall be made to appear to the said probate court that there are no debts or liabilities outstanding and unpaid against said estate, or that the personal estate of said deceased is amply sufficient for the payment of all claims or liabilities outstanding or allowed against the said estate, the said probate court shall thereupon, by order, deliver over the said real estate of said deceased to the heirs or devisees of said estate, although the said estate shall not then have been finally settled, and thereupon the right of the said executor or administrator to the possession of the real estate of said deceased, and to receive the rents, issues and profits thereof shall cease: *Provided further*, That the provisions of this chapter shall not be construed to interfere with the possession of the homestead.

Proviso,
delivery of
real estate
to heirs.

Further
proviso,
homestead.

SEC. 7. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the judge of probate, on oath, that any person is suspected to have concealed, embezzled, conveyed away or disposed of any money, goods or chattels of the deceased or that such person has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings, which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath, upon the matter of such complaint.

Proceedings in
case of
suspected em-
bezzlement.

SEC. 8. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint the court may, by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody until he shall submit to the order of the court. The probate judge shall cause the examination to be taken down by a stenographer, or in such mode as shall in his discretion seem to him best, and said judge shall direct all such interrogatories and answers to be reduced to writing, signed by the party and filed in the probate court.

Commitment
for refusal to
appear, etc.

SEC. 9. The judge of probate upon the complaint on oath of any executor or administrator, may cite any person, who shall have been entrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts or other papers belonging to such estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

Proceedings to
compel
account by
person en-
trusted with
part of
estate.

When executor to compound with debtor.

SEC. 10. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge upon receiving a fair and just dividend of his effects.

Interest in mortgaged premises to be considered personal assets, etc.

SEC. 11. When any mortgagee of real estate, or any assignee of such mortgage, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator; and he may foreclose the same, and have any other remedy for the collection of such debt which the deceased could have had if living, or may continue any proceeding commenced by the deceased for that purpose.

Executor to give releases and receipts, if redeemed.

SEC. 12. In case of the redemption of any such mortgage, or the sale of the mortgaged premises by virtue of a power of sale contained therein or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if, upon a sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same, for the same persons, whether creditors, next of kin or others, who would have been entitled to the money, if the premises had been redeemed or purchased at such sale by some other person.

For whom to hold in trust.

When real estate deemed personal estate.

SEC. 13. Any real estate which may have been purchased or which may hereafter be purchased by an executor or an administrator as such, upon a sale on execution for the recovery of a debt due to the estate or upon a sale in the foreclosure of a mortgage held by said executor or administrator (whether owned by the deceased in his lifetime or acquired after his death), shall be considered as personal estate and may be sold and conveyed by said executor or administrator in like manner as personal estate may now be sold, and the proceeds thereof shall be held and divided as personal estate: *Provided*, Such sale shall first be approved by the judge of probate having jurisdiction of such estate by an order entered in the journal of the court, a copy of which order shall be attached to and recorded with the deed given by such executor or administrator.

Proviso, approval of probate judge.

If land not sold, how assigned and distributed.

SEC. 14. If any land so held by an executor or administrator as mentioned in the preceding section, shall not be sold by him as therein provided, it shall be assigned and distributed to the same persons, and in the same proportions, as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it were real estate which the deceased held in his lifetime.

SEC. 15. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate, or so caused the same to be conveyed, that the deeds of conveyance are void as against creditors or so that the grantee of such estate is in equity a trustee for the benefit of creditors, the executor may, and it shall be his duty to commence and prosecute to final judgment any proper action or suit at law or in chancery for the recovery of the same, and may recover for the benefit of the creditors, all such real estate, and may also and it shall be his duty to sue in any proper action at law or in equity and recover for all goods, chattels, rights, credits or assets of any kind which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance or which may have been so conveyed or caused to be conveyed, that the conveyance is void as against creditors, or so conveyed or caused to be conveyed that in equity the grantee is a trustee for the benefit of the creditors of the deceased.

When suit to be prosecuted to recover lands, etc., fraudulently conveyed by deceased.

SEC. 16. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section for the benefit of the creditors unless on application of a creditor or creditors of the deceased, nor unless the creditor or creditors making the application shall pay such part of the cost or expenses, or give such security to the executor or administrator therefor as the probate court shall deem just and equitable: *Provided*, That in case any executor or administrator after application of any creditor and an offer by such creditor to pay or secure to such executor or administrator such portion of the costs or expenses as the probate court may deem reasonable, shall refuse or neglect to sue for such estate or to prosecute such suit, then such creditor upon filing a bond in such sum and with such sureties as shall be approved by the judge of probate, conditioned to save such executor or administrator harmless from the whole of the costs and expenses of such proceedings in case of failure to recover, may sue and recover such estate in the name of such executor or administrator, and for the benefit of the creditors of such estate: *Provided further*, That in case suit is brought by a creditor in the name of the executor or administrator as well as when brought by the executor or administrator individually, the court shall order the reasonable costs and expenses of the proceedings paid from the fund or estate recovered, if any, before any distribution of the same shall be made to creditors.

Executor not bound to prosecute, except by order of creditors.

Proviso, when executor refuses.

Further proviso, costs.

SEC. 17. All real estate so recovered as provided in the fifteenth section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from

Disposition of real estate recovered.

the probate court, and the proceeds of all goods, chattels, rights and credits recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

When goods recovered by executor not considered assets.

SEC. 18. When the executor or administrator of a trustee, carrier or other person who claimed only a special property in any goods, to hold them for the use and benefit of another, shall recover such goods, or the value thereof, or damages for the taking or detention thereof, or for any injury done to the same, the goods or money so recovered shall not be considered assets in his hands, but shall, after deducting the costs and expenses of the suit, be paid over and delivered to the person for whose use or benefit they were so claimed or held by the deceased person.

Goods returned pursuant to judgment not considered assets.

SEC. 19. When judgment for a return, in an action of replevin, shall be rendered against an executor or administrator, the goods returned by him shall not be considered assets in his hands; and if they shall have been included in the inventory, it shall be a sufficient discharge for the executor or administrator, to show that they have been returned in pursuance of such judgment.

CHAPTER LV.

Of Commissioners on Claims.

When judge to appoint.

SECTION 1. When letters testamentary or of administration shall be granted by the judge of any court of probate, such judge may, in his discretion, appoint two or more suitable persons to be commissioners, to receive, examine and adjust all claims and demands of all persons against the deceased except in the following cases:

1. When it shall appear that there are no debts existing against such deceased person;

2. When the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law, in which case such assignment shall be deemed a full and final administration, and bar to all claims against the estate;

3. In cases where the petition for the appointment of an administrator is filed and the estate is administered in pursuance of sections twenty-four, twenty-five and twenty-six of chapter fifty-three of this act.

Meetings to examine claims.

SEC. 2. When such commissioners shall be appointed it shall be their duty to appoint convenient times and places when and where they will meet for the purpose of examining and allowing the claims; and within thirty days after their appointment they shall give notice of the times and places of their meeting, and of the time limited for creditors to

present their claims, by publishing a notice thereof at least three weeks successively in some newspaper printed in the same county, if there is a newspaper published therein, and otherwise in some newspaper in an adjoining county or in any other manner in which the court may direct.

Publication
of notice.

SEC. 3. The judge of probate in the commission issued to the commissioners shall designate the paper in which such notice shall be published and any other mode of notifying which he may deem necessary and proper.

Designation
of paper.

SEC. 4. If any commissioner appointed by the probate court shall at any time die, remove out of the State, refuse, or become in any other way incapacitated to perform the duties of his appointment, the court may appoint another commissioner in his place; and in case where the court shall have appointed two commissioners, who are unable to agree upon the allowance or disallowance of any claim or claims which may have been presented to them, the court shall appoint another commissioner to act with them upon such claim or claims, and no further notice of the meeting or meetings shall be required in consequence of such appointment.

Death of
commis-
sioner, etc.

Disagreement.

SEC. 5. The probate court shall allow such time as the circumstances of the case shall require for the creditors to present their claims to the commissioners for examination and allowance, which time shall not in the first instance exceed one year, nor be less than four months; and the time allowed shall be stated in the commission.

Time allowed
for presenting
claims.

SEC. 6. The probate court may extend the time allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

Extension
of time.

SEC. 7. On the application of a creditor who has failed to present his claim, if made at any time before the estate is closed, the judge of probate may revive the commission and allow further time not exceeding one month, for such creditor to present his claim to the commissioners. When such claim shall have been presented to the commissioners, they shall personally notify the executor or administrator, and the creditor, or their attorneys, of the time and place of hearing such claim, and as soon as practicable they shall examine and pass upon said claim and make return of their doings to the probate court, within thirty days of the hearing thereof: *Provided*, That all costs and charges resulting from said application, and the proceedings thereon had in the probate court and before such commissioners shall be paid by the party making the application or by the estate, or in part by the applicant and part by the estate, as the probate court, upon application and notice to the administrator or executor, and the party making the application, shall direct.

Revival of
commission.

Notice
of hearing.

Proviso, costs.

When judge
to adjust
claims.

Notice.

Effect.

May appoint
commis-
sioners.

Proviso,
claims for
funeral
expenses.

Set-offs.

Oath of com-
missioners.

SEC. 8. In all cases where it is competent for the judge of probate to appoint commissioners to receive, examine and adjust claims against estates of deceased persons, or to revive or continue a commission already granted, the judge of probate may, if he shall think proper, instead of appointing commissioners or reviving or continuing a commission, appoint a time and place for the examination and adjustment of claims against the estate before himself; and in such case if the object be to hear claims generally, he shall give the same notice of the time and place when he will sit to hear claims, and of the time limited for creditors to present their claims as is required by law to be given by commissioners; and if the object be to examine and adjust some particular claim, he shall cause notice of the time and place and object of the hearing to be given to all persons interested, or by publication in such newspaper of the county as he shall designate; and when a hearing shall be thus as aforesaid had before a judge of probate, on filing proof that notice has been given as herein prescribed, the action of the judge of probate in passing upon and adjusting claims shall have the same effect upon all claims against the estate as the action of commissioners would have had if commissioners had been appointed and had acted according to law, and subject to the same provisions in reference to appeal. When notice shall have been given of the hearing of claims before the court, the probate judge may on such hearing appoint commissioners if he shall think proper as in other cases, and in the order appointing them, shall direct when and where they shall meet, which meeting shall be without further notice; and in any case, if he shall choose to do so, may preside at the sessions of commissioners, make rulings as to the evidence and directions as to the law, and the commissioners shall make their report and the same shall have like effect as in case the probate judge shall decline to meet with such commissioners: *Provided*, That claims for funeral expenses may be allowed by the probate judge at any time before the general hearing of claims, upon five days' notice to the claimant and the executor or administrator.

SEC. 9. When a creditor against whom the deceased had claims shall present a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be; but no claim barred by the statute of limitations shall be allowed by the commissioners in favor of or against the estate, as a set-off or otherwise.

SEC. 10. The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

SEC. 11. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented, or exhibited in off-set, and stating how much was allowed, and how much disallowed, together with the final balance, whether in favor of the creditor or the estate; and the report shall state particularly the manner of giving notice to the claimants. Report.

SEC. 12. The commissioners shall have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which may be payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate. What claims commissioners may try and decide, etc.

SEC. 13. Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day, according to the terms, and at the time specified in the contract. Debts payable at future day.

SEC. 14. Every person having a claim against a deceased person, proper to be allowed by the commissioners, who shall not, after the publication of notice as required in the second section of this chapter, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever. Persons failing to present claims, barred.

SEC. 15. When commissioners shall be appointed, as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except actions of ejectment, or other actions to recover the seizin or possession of real estate, and actions of replevin, nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts. Certain suits not to be brought against executor.

SEC. 16. All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same, and if judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate. Pending actions to be prosecuted.

SEC. 17. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery Judgment to be certified.
Executor not prohibited from suing or defending.

When judge
to adjust
claims.

Notice.

Effect.

May appoint
commis-
sioners.

Proviso,
claims for
funeral
expenses.

Set-offs.

Oath of com-
missioners.

SEC. 8. In all cases where it is competent for the judge of probate to appoint commissioners to receive, examine and adjust claims against estates of deceased persons, or to revive or continue a commission already granted, the judge of probate may, if he shall think proper, instead of appointing commissioners or reviving or continuing a commission, appoint a time and place for the examination and adjustment of claims against the estate before himself; and in such case if the object be to hear claims generally, he shall give the same notice of the time and place when he will sit to hear claims, and of the time limited for creditors to present their claims as is required by law to be given by commissioners; and if the object be to examine and adjust some particular claim, he shall cause notice of the time and place and object of the hearing to be given to all persons interested, or by publication in such newspaper of the county as he shall designate; and when a hearing shall be thus as aforesaid had before a judge of probate, on filing proof that notice has been given as herein prescribed, the action of the judge of probate in passing upon and adjusting claims shall have the same effect upon all claims against the estate as the action of commissioners would have had if commissioners had been appointed and had acted according to law, and subject to the same provisions in reference to appeal. When notice shall have been given of the hearing of claims before the court, the probate judge may on such hearing appoint commissioners if he shall think proper as in other cases, and in the order appointing them, shall direct when and where they shall meet, which meeting shall be without further notice; and in any case, if he shall choose to do so, may preside at the sessions of commissioners, make rulings as to the evidence and directions as to the law, and the commissioners shall make their report and the same shall have like effect as in case the probate judge shall decline to meet with such commissioners: *Provided*, That claims for funeral expenses may be allowed by the probate judge at any time before the general hearing of claims, upon five days' notice to the claimant and the executor or administrator.

SEC. 9. When a creditor against whom the deceased had claims shall present a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be; but no claim barred by the statute of limitations shall be allowed by the commissioners in favor of or against the estate, as a set-off or otherwise.

SEC. 10. The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

SEC. 11. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented, or exhibited in off-set, and stating how much was allowed, and how much disallowed, together with the final balance, whether in favor of the creditor or the estate; and the report shall state particularly the manner of giving notice to the claimants.

SEC. 12. The commissioners shall have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which may be payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate.

What claims commissioners may try and decide, etc.

SEC. 13. Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day, according to the terms, and at the time specified in the contract.

Debts payable at future day.

SEC. 14. Every person having a claim against a deceased person, proper to be allowed by the commissioners, who shall not, after the publication of notice as required in the second section of this chapter, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever.

Persons failing to present claims, barred.

SEC. 15. When commissioners shall be appointed, as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except actions of ejectment, or other actions to recover the seizin or possession of real estate, and actions of replevin, nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts.

Certain suits not to be brought against executor.

SEC. 16. All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same, and if judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

Pending actions to be prosecuted.

Judgment to be certified.

SEC. 17. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery

Executor not prohibited from suing or defending.

of any debt or claim, to final judgment, or from having execution on any judgment.

Set offs
allowed in
such cases.

SEC. 18. In such case, the defendant may set off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims may be set off in such action; and if final judgment shall be rendered in favor of the defendant, the same shall be certified by the court rendering it to the probate court, and the judgment shall be considered the true balance.

Joint
contracts.

SEC. 19. When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners, as if the contract had been joint and several, or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or to pay the same, if they would have been liable to do so upon payment thereof by the deceased.

CHAPTER LVI.

Payment of Debts of Deceased Persons.

Limitation of Time for Paying Debts.

Allowance of
time for
paying debts,
etc.

SECTION 1. The probate court, at the time of granting letters testamentary, or letters of administration, shall make an order allowing to the executor or administrator, a time for disposing of the estate, and paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

Extension
of time.

SEC. 2. The probate court may, on the application of the executor or administrator, from time to time, as the circumstances of the estate may require, extend the time for paying debts and legacies not exceeding one year at a time, nor so that the whole time allowed to the original executor or administrator shall exceed four years.

Application
for extension.

SEC. 3. When an executor or administrator shall make application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of such application, and of the time and place of hearing, to be given to all persons interested, by publication, three weeks successively in some newspaper to be designated by the court; and no such order extending the time shall be granted, unless such notice shall have been previously given.

Notice
of hearing.

Extension
upon appoint-
ment of new
administrator.

SEC. 4. When an executor or administrator shall die, or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court may extend the time for the payment of the debts and

legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding six months beyond the time which the court might by law allow to such original executor or administrator, upon due notice being given as required in the preceding section.

Of the Distribution of Assets Among the Creditors, and of Insolvent Estates.

SEC. 5. If, after the report of the commissioners, and ascertaining the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

When executor to pay debts.

SEC. 6. If the assets which the executor or administrator may have received, and which can be appropriated to the payment of debts, shall not be sufficient, he shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

Order of payment.

1. The necessary funeral expenses;
2. The expenses of the last sickness;
3. Debts having a preference by the laws of the United States;
4. Debts due to other creditors.

SEC. 7. If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

When creditors to be paid dividend.

SEC. 8. After the return of the report of the commissioners, and at or before the expiration of the time limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts, and the distribution of the assets which may have been received by the executor or administrator at the time for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this chapter.

When court to order payment and distribution.

SEC. 9. If an appeal shall have been taken from the decision of the commissioners, and shall remain undetermined, the probate court may suspend the decree for the payment of debts mentioned in the preceding section, or may order a distribution among the creditors whose claims shall have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

Appeal; suspension of decree for payment.

SEC. 10. When the disputed claims shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent, and in the same proportion as the claims of the other creditors.

When disputed claims ordered paid.

SEC. 11. If the whole of the debts shall not have been paid by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards

Further decree for distribution.

come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

When executor personally liable.

SEC. 12. Whenever a decree shall have been made by the probate court for the distribution of the assets among the creditors, the executor or administrator, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt; or he shall be liable on his bond, and the same may be put in suit, on the application of a creditor, whose debt or dividend shall not be paid, as above mentioned.

Notice of time limited for payment of debts.

SEC. 13. When the time for paying the debts of a deceased person shall be finally limited by order of the probate court, or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts; which notice shall be given by publishing the same at least three weeks successively in some newspaper to be designated by the court, and in such other manner as the court may direct.

Creditor neglecting to demand debt barred in two years.

SEC. 14. If, after notice shall have been given as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts, or if the notice shall be given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

Contingent Claims.

Class of claims affected.

SEC. 15. If any person shall be liable as security for the deceased or have any other claim against his estate which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented with the proper proof to the probate court, or to the commissioners, who shall state the same in their report, if such claim shall be presented to them; and in case such claim shall be made against such estate by reason of any bond or agreement of any kind in writing, signed by the deceased and binding him to pay any certain sum or sums for the support of the claimant for the lifetime of such claimant or for a term of years, or to perform certain work for another, for the non-performance of which his estate is liable, or binding deceased to pay any sums as rental during a lease, the administrator of said estate, by and with the consent of such claimant and the approval of the judge of probate, may compromise and settle such claim in such manner as shall be just and shall be determined by said judge of probate or probate court, and the same so determined shall be paid as other debts of said deceased, and the administrator in effecting such compro-

Compromise of claims.

mise is empowered, if necessary and if so ordered by the judge of probate, after such notice as he shall direct, to purchase the real estate covered by the lease, and in case of the purchase of the real estate as above provided the same shall be treated as personal property in the hands of the executor or administrator and disposed of and distributed as such.

SEC. 16. If the court shall be satisfied from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim when the same shall become absolute, or, if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of the other creditors.

When court may order sufficient estate retained for payment of claim.

SEC. 17. If such contingent claim shall become absolute, and shall be presented to the probate court, or to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be allowed by the probate court upon due proof, or it may be proved before the commissioners already appointed, or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report, and the persons interested shall have the same right of appeal as in other cases.

Contingent claim becoming absolute, may be presented, etc.

SEC. 18. If such contingent claim shall be allowed, as mentioned in the preceding section, or established on appeal, the creditor shall be entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator shall be sufficient for that purpose; but if the claim shall not be finally established as provided in the preceding section, or if the assets retained in the hands of the executor or administrator shall not be wholly exhausted in the payment of such claims, such assets, or the residue of them, shall be disposed of by order of the probate court, to the persons entitled to the same according to law.

When claimant entitled to payment.

SEC. 19. If the claim of any person shall accrue or become absolute, at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same at any time within one year after it shall accrue or become absolute, and if established in the manner provided in this chapter, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay; and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

Claim accruing after time limit, may be presented in court.

SEC. 20. When a claim shall be presented within one year from the time when it shall accrue, and be established, as

When creditor may recover of heirs, etc.

mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have a right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who shall have received sufficient real and personal property from the estate.

Defense
to action.

SEC. 21. If an action shall be commenced against an executor or administrator on such claim, as is mentioned in section nineteen, and for the payment of which sufficient assets shall not have been retained, as before provided in this chapter, the executor or administrator may give notice under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

When
defendant
discharged.

SEC. 22. If it shall appear on the trial of such action that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

To what
extent heirs,
etc., liable.

SEC. 23. When the heirs, devisees or legatees shall have received real or personal estate, and shall be liable for any debts as mentioned in this chapter, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action at suit or in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received, but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

Contribution.

SEC. 24. If by the will of the deceased, any part of his estate, or any devisees or legatees shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only according to the will.

When other
parties
may be
brought in.

SEC. 25. If all the persons liable for the payment of any such debt shall not be included in the action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred; but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

Proceeding
in chancery.

SEC. 26. If more than one person shall be liable as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be framed, and direct that the amount may be ascertained by a jury in the circuit court of the county in which the estate is settled; and the court of

chancery shall ascertain and determine how much each is liable to pay and may award execution therefor.

SEC. 27. If any of the heirs, devisees or legatees, shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living. Estate of heir, etc., liable.

SEC. 28. When any of the heirs, devisees or legatees, shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the case of devisees and legatees in the preceding fifty-second chapter. Contribution.

SEC. 29. If the appointment of commissioners to allow claims shall in any case be omitted, the judge of probate shall perform the duties devolving upon such commissioners by law; no person having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executor, administrator, heirs, devisees or legatees, as provided by law, and in such case a claimant having a lien upon real or personal estate of the deceased, by attachment previous to his death, may, on obtaining judgment, have execution against such real or personal estate. If commissioners not appointed, judge to perform duties. No person prevented from suing.

SEC. 30. In no other case, except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payment of debts, except in the case provided for in the preceding section. No other actions against executor allowed. Attachment or execution prohibited.

CHAPTER LVII.

Of the Partition and Distribution of Estates.

SECTION 1. When any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows: Disposition of personal estate.

1. The widow, if any, shall be allowed all her articles of apparel and ornaments, and all wearing apparel and ornaments of the deceased, and the household furniture of the deceased, and other personal property, to be selected by her, not exceeding in value two hundred dollars, and the allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate; Widow.

2. The widow and children constituting the family of the deceased shall have such reasonable allowance out of the estate as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances, which, in case of Family during settlement of estate.

an insolvent estate, shall not be longer than one year after granting administration nor for any time after the dower and personal estate shall be assigned to the widow;

Children
under ten,
without
mother.

3. When a person shall die leaving children under ten years of age, having no mother, or when the mother shall die before the children shall arrive at the age of ten years, or where the mother shall have been adjudged insane by any court of competent jurisdiction and shall not have recovered her sanity before such children arrive at the age of ten years, an allowance shall be made for the necessary maintenance of such children until they shall arrive at the age of ten years, out of such part of the personal estate and the income of the real estate as would have been assigned to the mother if she had been living and sane;

Widow and
children
under ten

4. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of one hundred fifty dollars over and above the allowance above provided for, the probate court may, by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under ten years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges and expenses of administration;

Payment
of debts.

5. If the personal estate shall amount to more than one hundred fifty dollars, and more than the allowance mentioned in the preceding subdivision of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate;

Distribution
of residue.

6. The residue, if any, of the personal estate shall be distributed as follows: One-third thereof to the widow of the deceased, and the remaining two-thirds to his children, or the issue of any deceased child or children, if any there be, by right of representation, except that if there be but one child, or the issue of such child living, then to the widow one-half of such residue and to such child, or the issue thereof, the other half, and if there be no widow nor child of the intestate living at his death, his estate shall be distributed to all his lineal descendants, and if all such descendants are in the same degree of kindred to the intestate, they shall share the estate equally, otherwise they shall take by right of representation. In case the deceased shall leave a widow and no children, or the issue of any deceased child surviving him, then such residue, if it shall not exceed the sum of three thousand dollars, shall go to such widow, and if it exceed the sum of three thousand dollars such excess shall be distributed, one-half to such widow and the other half to the father and mother of the deceased, if living, in equal shares; if either parent be deceased, such share shall go to the survivor, and if both parents be deceased, such share shall be distributed equally to the brothers and sisters and the lineal descendants of any deceased brother or sister by right of representation. And if there shall be neither father nor mother, nor brother

nor sister, nor children of such brother or sister surviving, then such residue shall go to the widow. In any other case the residue, if any, of the personal estate shall be distributed in the same proportion and to the same persons, and for the same purposes, as prescribed for the descent and disposition of the real estate;

7. In case any femme covert shall die possessed of any Femme covert. personal estate, her sole property, or any right or interest therein not lawfully disposed of by her last will and testament, the same shall, after the debts of the deceased, funeral charges and expenses of administration are paid, be distributed as follows: One-third to the husband, and the remaining two-thirds to her children, or the issue of any deceased child or children, if any there be, by right of representation, except that if there be but one child, or the issue of a deceased child surviving her, then such residue shall be divided between such husband and such child, or the issue of such deceased child, as aforesaid, in equal proportions, and if there be no husband or child of the intestate living at her death, her estate shall be distributed to all her lineal descendants, and if all said descendants are in the same degree of kindred to the intestate, they shall share the estate equally, otherwise they shall take by right of representation. If there shall be no child, or issue of any deceased child surviving her, one-half of said residue shall go to the husband of the deceased and the other half to her father and mother, if living, in equal shares. If either parent be deceased, such shares shall go to the survivor, and if both parents be deceased, such shares shall be distributed equally to the brothers and sisters and the lineal descendants of any deceased brother or sister, by right of representation; and if there shall be neither father nor mother, nor brother nor sister, nor children of such brother or sister surviving, then such residue shall go to the surviving husband; in any other case the residue, if any, of the personal estate shall be distributed in the same proportion and to the same persons, and for the same purposes as prescribed for the descent and disposition of the real estate.

SEC. 2. Before any partition or division of any estate among the heirs, devisees or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased, under ten years of age; and the probate court may order the executor or administrator to retain in his hands sufficient estate for that purpose, except where some provisions shall have been made by will for their support, or where their distributive share of the estate is sufficient in the judgment of the court for their support. Provision for children under ten.

SEC. 3. After the payment of the debts, funeral charges and expenses of administration, and after the allowances made for the expense of the maintenance of the family of the deceased and for the support of the children under ten years of age, and after the assignment to the widow of her After payment of debts, etc., residue, how assigned.

share in the personal estate, or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the probate court shall, by a decree for that purpose, assign the residue of the estate, if any, to such persons as are by law entitled to the same, subject, however, to the widow's right of dower, if there be a widow of the deceased entitled to dower, and her dower shall not have been assigned and set off to her.

Decree to name persons and proportions.

SEC. 4. In such decree the court shall name the persons and the proportions or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any other person having the same or any part thereof, after the expiration of sixty days from the date of such decree, unless an appeal shall have been taken therefrom, in which case they shall have the same right immediately upon the final termination of such appeal.

On whose application decree made.

SEC. 5. Such decree may be made on the application of the executor or administrator, or of any person interested in the estate, but no heir, devisee or legatee shall be entitled to a decree for his share, until payment of the debts, and allowances and expenses mentioned in the preceding section shall have been made or provided for, unless he shall give a bond to the judge of probate, with such surety or sureties as the court may direct, to secure the payment of his just proportion of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

Bond of heir, etc.

Partition, when and how made.

SEC. 6. When the estate, real or personal, assigned to two or more heirs, devisees or legatees shall be in common and undivided, and the respective shares shall not be separated and distinguished, and the widow's dower shall have been assigned and set off to her, if she be entitled to a dower, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose by the probate court, who shall be duly sworn to the faithful discharge of their duties, and the judge of probate shall issue a warrant to them for that purpose. And if any commissioner appointed as herein provided shall die, remove out of the State, refuse or become in any other way incapacitated to perform said duties, the court may appoint another commissioner in his place, and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

Proceedings when real estate lies in different counties.

SEC. 7. If the real estate shall lie in different counties, the probate court may, if it shall be judged proper, appoint different commissioners for each county, and in such case, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this State.

SEC. 8. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, as provided in section nine of chapter fifty-two.

Notice of application for partition.

SEC. 9. Partition of the real estate may be made, as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be set to the persons holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Partition, how made.

SEC. 10. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds or description, that the same may be easily distinguished, unless any two or more of the parties interested shall consent to have their share, or any portion thereof, set out so as to be held in common and undivided, in which case the same shall be set out according to such consent; and where the estate shall consist in whole or in part of money, due or to become due on contract made by the deceased for the sale of real estate, the land described in such contract shall be set off in fee, with the contract, to the individual entitled to such contract, but subject to the terms thereof.

Distribution of shares.

Money due on land contract.

SEC. 11. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger: *Provided*, The party so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

When real estate cannot be divided.

Proviso, payment for shares of others.

SEC. 12. When any tract of land, messuage or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section: *Provided*, The party so accepting it shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award, accordingly; but such partition shall not be established by the court, until the sum so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

When tract of greater value than any share and cannot be divided.

Proviso, payment for others' portions.

SEC. 13. When partition of real estate among heirs or devisees shall be required, or dower is to be assigned to a widow in the same, and such real estate shall be in common and undivided with the real estate of any other person; such

When estate is in common, division to be made.

other person shall be made a party to all proceedings, and the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made and established by an order of the probate court, shall be binding on all the persons interested.

Guardians for minors and agents for non-residents to be appointed.

SEC. 14. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as shall reside out of the State, if they do not appear; and notice of the appointment of such agents shall be given to the commissioners in their warrant; and notice shall be given to all the parties interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Report of commissioners and proceedings thereon.

SEC. 15. The commissioners shall make report of their proceedings to the probate court in writing; and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court; and a copy thereof, attested by the judge of probate, under the seal of the court, shall be recorded in the office of the register of deeds of the county where the lands lie.

When partition dispensed with.

SEC. 16. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them shall request that such partition be made.

Questions as to advancements, how made.

SEC. 17. All questions as to advancements made or alleged to be made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the probate court, or, in case of appeal, of the circuit or supreme court, shall be binding on all persons interested in the estate.

Appeal.

SEC. 18. Any person aggrieved by any order, decree or denial, of a probate court, in pursuance of the provisions of this chapter, may appeal therefrom as provided in other cases.

Partition, when conclusive.

SEC. 19. The partition, when finally confirmed and established, shall be conclusive on all the heirs and devisees, and all persons claiming under them, and upon all persons interested; and the judge of probate shall cause, a duly certified copy of the report to be recorded in the office of the register of deeds for the county, and the expense thereof shall be a charge against the estate, to be paid out of the funds thereof in the same manner as other costs of administration; and

Record.

such record shall be notice of all matters therein contained, and shall be evidence thereof.

SEC. 20. If, at the time of the partition or distribution of any estate as provided in this chapter, the executor or administrator shall have retained sufficient effects in his hands, which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, when it shall appear to the court just and equitable, and not inconsistent with the intention of the testator.

When executor to pay expenses.

SEC. 21. But if there are no effects in the hands of the executor or administrator which may be lawfully applied to that purpose, the expenses and charges of the partition, being ascertained by the probate court, shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises; and the proportions shall be settled and allowed by the probate court; and if any one shall neglect to pay the sum assessed on him by the court, an execution may be issued therefor against him by such court, in favor of the persons entitled to the same.

When expenses paid by parties.

SEC. 22. When the term of a widow entitled to dower or other life estate in the lands of a deceased person shall expire, the reversion may be assigned to the persons entitled to the same, and partition thereof be made, in the manner prescribed in this chapter in relation to other estates of deceased persons.

When partition of reversion may be made.

SEC. 23. When any estate shall be assigned by decree of the court, or be distributed by commissioners, as provided in this chapter, to any person residing out of this State, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same, for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

When court to appoint agent for non-resident

SEC. 24. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Agent to give bond.

Compensation.

Determination of Heirs.

SEC. 25. When any person shall have deceased, having title to any lands in this State, or whenever a conveyance or grant of any lands in this State shall be or shall have been made to the heirs, minor heirs or legal representatives of any deceased person without indicating or showing who are or were such heirs, minor heirs, or legal representatives, it shall be lawful for any person or persons claiming an interest in said lands, whether as heirs at law, minor heirs, or

Application for adjudication of heirship.

through or under such heir or heirs, to apply to the probate court of the county in which said lands or any part thereof are located, which said court shall adjudicate and determine who are or were the legal heirs, minor heirs, or legal representatives of said deceased person, and entitled to the lands of which the deceased died seized, or the lands embraced in the conveyance or grant made to the heirs at law, minor heirs, or the legal representatives of such deceased person.

How made.

SEC. 26. The application shall be made by filing a petition in said court, subscribed by the petitioner or petitioners, his, her, or their attorney, duly verified, setting forth the name of the deceased, that he died seized of lands in this State, or that a conveyance or grant was made to the legal representatives, or heirs, or minor heirs of the deceased, as the case may be, of certain lands, a portion of which, and describing such portion, the petition shall show to be located in the county where said petition is to be filed; the names and residences of the heirs, minor heirs or legal representatives of said deceased person, so far as the same are known to the petitioner, and shall conclude with a prayer for the determination and adjudication aforesaid, and thereupon said court shall make an order setting forth the time and place of hearing such petition, and shall give notice thereof by publication to all known heirs as provided for in section nine of chapter fifty-two.

Order for hearing.

Hearing and adjudication.

SEC. 27. At the time assigned for the hearing of said petition, or at the time to which said hearing may be adjourned, the court may hear proofs taken by commission or by witnesses produced in open court, of the facts set forth in said petition, and shall thereupon, if the evidence be sufficient, find and adjudge who are, or were, the heirs, minor heirs, or legal representatives of the deceased and entitled by the laws of this State to inherit the real estate of the deceased, or to take title to lands conveyed or granted to the heirs, minor heirs, or legal representatives of said deceased, which finding and adjudication shall be entered on the journal of said court, and which entry, or a duly certified copy thereof, shall be prima facie evidence of the facts therein found.

Finding to be evidence.

Determination in other cases.

SEC. 28. Whenever it shall be necessary for any other purpose to determine who the heirs at law of any deceased persons are, or were, on the petition of any interested party, and on like proceedings as provided in the last three preceding sections, the court may make a determination thereof.

Certified copy of order may be recorded.

SEC. 29. Whenever any probate court of this State shall make an order determining who are or were the heirs at law of such deceased person at the time of his death, a certified copy of such order containing such finding may be recorded in the office of the register of deeds of any county in the State wherein may be located any real estate owned by such deceased person at the time of his death, or in which such deceased person may have any interest whatsoever, and such original order of the probate court, or a certified copy thereof,

and the original record of the certified copy recorded in the office of the register of deeds, or a certified copy thereof, shall be prima facie evidence of the fact as to who were heirs of the said deceased person at the time of his death, and as such entitled by inheritance to the interest in such real estate owned by their ancestor at the time of his death, and the original record of said probate court, or a certified copy thereof, and a record of said certified copy recorded in the office of the register of deeds, or a certified copy thereof, shall be admitted in evidence in all the courts of this State upon any trial or proceedings had before such court in all cases where the question of such heirship may be involved or wherein it becomes material.

To be prima facie evidence.

Admissible in evidence.

Assignment of Dower.

SEC. 30. When a widow is entitled to dower in lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon application of the widow or any other person interested in the lands; notice of which application shall be given to such heirs, devisees or other persons, in such manner as the judge of probate shall direct.

When dower may be assigned by probate court.

SEC. 31. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Warrant for assignment of dower.

SEC. 32. The commissioners shall be sworn before a judge or justice of the peace to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof recorded in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal; and one-half of the cost of such proceedings shall be paid by the widow, and the other half by the adverse party.

Commissioners to be sworn.

Record in register of deeds' office.

SEC. 33. When the estate of which dower is to be assigned, consists of a mill or other tenement which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

When estate consists of mill, etc., how assigned.

**Disposal of Unclaimed Moneys in the Hands of Executors
and Administrators.**

Money to be
deposited
with county
treasurer.

SEC. 34. When any executor or administrator shall have made final settlement with the probate court it shall be the duty of the court to order the said executor or administrator to deposit with the county treasurer such moneys as he may have belonging to any non-resident or unknown heir or claimant whose whereabouts after diligent inquiry he cannot ascertain, taking his receipt therefor, and upon filing said receipt in the probate court where such settlement has been made, such executor or administrator shall be entitled to have an order made discharging him and his bond, the same as though he had paid the money to the heir or claimant and taken receipt therefor.

Duty of
county
treasurer.

SEC. 35. It shall be the duty of the county treasurer, upon being furnished with a certified copy of such order, to receive the money mentioned in said order and safely keep the same. He shall keep all such moneys in a separate fund, and keep a separate account with each individual mentioned in the aforesaid orders. He shall pay out said fund from time to time upon the order of the probate court, and shall turn over any surplus left in his hands at the termination of his term of office, to his successor. Said county treasurer, and each such successor in said office, before receiving any such moneys, shall also give a bond, running to the judge of probate and his successor in office, with two or more sufficient sureties, to be approved by the judge of probate, and in such sum as he shall direct, conditioned that such person and his deputy shall pay out said fund upon the orders of the judge of probate, and shall render to the judge of probate, and to the board of supervisors, at the end of each year a true account of said fund, and that he will deliver over to his successor in office all moneys, books, papers and other things appertaining or belonging to said fund. Said county treasurer for the care of said fund shall be allowed to take one per cent out of the different sums paid out by him on the order of the probate court, unless the amount so paid out to any one individual shall exceed the sum of one thousand dollars, in which case he shall take only one-half of one per cent.

Bond.

Compensation
of treasurer.

Payment
to persons
entitled
to money.

SEC. 36. When money shall be deposited as aforesaid, any person or persons entitled to the same may at any time apply to the court making said order for an order directing the county treasurer to pay over said money, and upon satisfactory proof being made to said court, of the right of the claimant to said money, said court shall make an order directing the county treasurer to pay the same over to him. Upon such hearing the court shall make such order as to notice of the hearing as it may think proper.

Suits on
treasurer's
bond.

SEC. 37. Suits may be brought upon the bond so given by the county treasurer, in the name of the judge of probate, for the use and benefit of any one interested, in the same

guardian the custody and care of the person of such minor, such guardian shall continue to have the care and custody of the person and education of the minor, until such minor shall arrive at the age of twenty-one years, or until the guardian shall be discharged according to law.

SEC. 9. If any minor who has a father living, has property which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income or principal of his own property in whole or in part, as shall be judged reasonable, and shall be directed by the probate court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

When expense of education defrayed from minor's estate.

SEC. 10. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time, and every such testamentary guardian shall have the same powers and shall perform the same duties with regard to the person and estate of the ward as a guardian appointed by the judge of probate: *Provided*, That when the mother of such children shall survive the father, the appointment of guardian by such will shall not be operative until approved by the judge of probate, and after opportunity afforded to the mother to show cause in opposition thereto.

Appointment by will of father.

An appeal shall lie from the order of approval of the judge of probate as in cases of other orders and decrees of the probate court: And *Provided further*, That the mother of a child

Proviso, mother may oppose.

whose father died without making an appointment of a guardian as above provided, and for whom no guardian has been otherwise appointed may, by her last will in writing, appoint a guardian or guardians of such child, the same as the father might have done under the provisions of this section: And *Provided further*, That when both father and

Further proviso, appointment by will of mother.

mother are dead, and where it appears that the father or mother attempting to appoint such testamentary guardian was not a resident of this State, and had not the custody or control of such infant or infants prior to his or her death, but that such infants were under the lawful control of citizens of this State for one year or upwards prior to such death, or when a citizen of this State shall have lawful custody of an orphan child or children, and shall have been appointed guardian thereof by the probate court of the county where said child or children reside, it shall not be competent by will to transfer such control from such citizen or from the guardian so appointed to the testamentary guardian, and all wills heretofore made shall be subject to the provisions of this section.

Further proviso, father and mother both dead.

SEC. 11. Every such testamentary guardian shall give bond

Bond of testamentary guardian

not living in the same county where the petition is filed, service may be made by sending a copy of said notice by registered mail. In all other cases notice of the time and place of the hearing of such petition shall be given as is now or may hereafter be provided by law or rule of court. Notice of the time and place of the hearing of such petition shall be given as is now, or may hereafter be provided by law or rule of court.

Who to
nominate
guardians.

SEC. 3. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly.

When judge to
nominate.

SEC. 4. If the guardian nominated by such minor shall not be approved by the judge, or if the minor shall reside out of this State, or if, after being cited by the judge, he shall neglect for ten days to nominate a suitable person, the judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years.

When
nomination
may be
certified by
justice
or clerk.

SEC. 5. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the probate court, his nomination of a guardian, made in writing, and signed by himself, may be certified to the judge of probate by a justice of the peace, or by the township clerk of the township in which such minor resides, which shall have the same effect as if made in the presence of the judge: *Provided*, That if such minor shall be temporarily away from this State, in any other state or territory of the United States such nomination may be certified with like effect by any civil or military officer of the United States in such state or territory, holding a commission from the president of the United States, or the Governor of this State.

Proviso, when
minor out
of state.

Who
entitled
to custody
of minor.

SEC. 6. The father of the minor, and in case of his decease, the mother, being respectively competent to transact their own business, and otherwise suitable, shall be entitled to the custody of the person of the minor and to the care of his education: *Provided*, That if the judge of probate of the proper county shall in any case, after an examination into the facts, make an order declaring either or both of the parents incompetent or unsuitable to have the custody of the person or the care of the education of the minor, in such cases the guardian appointed by the probate judge shall have the custody of the person of the minor and the care of his or her education.

Proviso,
parents in-
competent,
etc.

When
guardian to
have custody
of ward.

SEC. 7. If the minor have no father or mother living competent and suitable to have the custody of the person and care of the education of such minor, the guardian so appointed shall have the custody of the person and care of the education of such minor.

Powers and
duties of
guardian.

SEC. 8. Every guardian appointed as aforesaid shall have the care and management of the estate of the minor, and when the probate judge shall have made an order giving such

guardian the custody and care of the person of such minor. such guardian shall continue to have the care and custody of the person and education of the minor, until such minor shall arrive at the age of twenty-one years, or until the guardian shall be discharged according to law.

SEC. 9. If any minor who has a father living, has property which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income or principal of his own property in whole or in part, as shall be judged reasonable, and shall be directed by the probate court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

When expense of education defrayed from minor's estate.

SEC. 10. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time, and every such testamentary guardian shall have the same powers and shall perform the same duties with regard to the person and estate of the ward as a guardian appointed by the judge of probate: *Provided*, That when the mother of such children shall survive the father, the appointment of guardian by such will shall not be operative until approved by the judge of probate, and after opportunity afforded to the mother to show cause in opposition thereto.

Appointment by will of father.

Proviso, mother may oppose.

An appeal shall lie from the order of approval of the judge of probate as in cases of other orders and decrees of the probate court: And *Provided further*, That the mother of a child

Appeal.

whose father died without making an appointment of a guardian as above provided, and for whom no guardian has been otherwise appointed may, by her last will in writing, appoint a guardian or guardians of such child, the same as the father might have done under the provisions of this section: And *Provided further*, That when both father and mother are dead, and where it appears that the father or mother attempting to appoint such testamentary guardian was not a resident of this State, and had not the custody or control of such infant or infants prior to his or her death,

Further proviso, appointment by will of mother.

but that such infants were under the lawful control of citizens of this State for one year or upwards prior to such death, or when a citizen of this State shall have lawful custody of an orphan child or children, and shall have been appointed guardian thereof by the probate court of the county where said child or children reside, it shall not be competent by will to transfer such control from such citizen or from the guardian so appointed to the testamentary guardian, and all wills heretofore made shall be subject to the provisions of this section.

Further proviso, father and mother both dead.

SEC. 11. Every such testamentary guardian shall give bond

Bond of testamentary guardian.

in like manner, and with like condition, as is hereinafter required of a guardian appointed by the judge of probate.

Special
guardian.

SEC. 12. The judge of probate of any county, upon a proper showing, upon such notice as he shall direct, pending any application for the appointment of a general guardian as aforesaid, or pending any appeal or litigation in relation to the appointment of such general guardian, may, if he shall deem it fit and proper, under the circumstances of the case, appoint a special guardian of such person. Such special guardian shall in proper cases and when so ordered by the court, have the care and custody of the person of his ward and the management of all his estate, and shall give the security specified in the next section. He shall hold his office until the question of appointment of a general guardian be decided, or until he shall be discharged by the judge of probate.

Duties.

Bond of
guardian.

SEC. 13. Every guardian shall give bond, with surety or sureties, to the judge of probate, in such sum as the judge shall order with condition as follows:

1. To make a true inventory of all the real estate, and of all the goods, chattels, rights and credits of the ward, that shall come to his possession or knowledge, and to return the same into the probate court at such time as the judge shall order;

2. To dispose of and manage all such estate and effects according to law, and for the best interest of the ward, and faithfully to discharge his trust as such guardian;

3. To render an account on oath, of the property in his hands, including the proceeds of all the real estate which may be sold by him, and of the management and disposition of all such property, within one year after his appointment, and at least once each year thereafter, and at such other times as the judge of probate shall direct; and

4. At the expiration of his trust to settle his accounts with the judge of probate, or with the ward, or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Appraisal
of estate.

SEC. 14. Upon the taking of the inventory, required by the preceding section, the estate and effects comprised therein shall be appraised by two or more suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of the estate of a deceased testator or intestate: *Provided*, That no such appraisal need be had if such estate shall consist entirely of money; and every guardian shall account for and dispose of the personal estate of the ward, in like manner as is directed with respect to executors and administrators.

Proviso, when
appraisal un-
necessary.

Definition of
"spendthrift."

SEC. 15. The word "spendthrift," in all the provisions relating to guardians and wards, contained in this or any other statute, is intended to include every person who is liable to

be put under guardianship on account of excessive drinking, gaming, idleness or debauchery.

SEC. 16. After the order for notice for the appointment of a guardian for a spendthrift, has been issued, the petitioner may cause a copy of the petition, with the order for such notice, to be filed in the office of the register of deeds for the county, and if a guardian shall be appointed upon such application, all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of real or personal estate, made by such spendthrift after the filing of a copy of such petition and order as aforesaid, and before the termination of the guardianship, shall be utterly void.

Copy of petition and order to be filed with register of deeds.

Spendthrifts' contracts void.

SEC. 17. When a guardian shall be appointed for an insane person or a spendthrift, the judge shall make an allowance to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the petition.

Allowance for defending.

SEC. 18. Every guardian appointed for a spendthrift shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged.

Guardian to have custody.

SEC. 19. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, shall pay all just debts due from the ward and all expenses incurred by any county, in the care, support or maintenance of such ward, upon the approval of the judge of probate, out of his personal estate, and the income of his real estate, if sufficient, and if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law.

Guardian to pay debts, etc.

SEC. 20. Every such guardian shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian or next friend.

Guardian to settle accounts and collect debts due.

SEC. 21. Nothing contained in this chapter shall impair or affect the power of any court of common law, probate court, court of chancery, or court of a justice of the peace, to appoint guardians to defend the interests of minors impleaded in such court, or interested in any matter there pending, nor their power to appoint or allow any person as next friend for a minor, to commence, prosecute or defend any suit in his behalf.

Guardians ad litem, etc.

SEC. 22. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his family, if there be any; and if such income and profits shall be insufficient for that purpose, the guardian may sell the

Management of estate.

real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward, and his family, if there be any.

Guardian's
assent to
partition
or dower.

SEC. 23. The guardian may join in and assent to a partition of the real estate of the ward in the cases, and in the manner provided by law, and he may also assign and set out dower in the said estate to any widow entitled thereto.

Transfer of
stocks, etc.

SEC. 24. The judges of probate in their respective counties, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the judge of probate shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank or other corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the said probate court may make such further orders, and give such directions, as the case may require, for managing, investing and disposing of the estate and effects in the hands of the guardian.

Removal of
guardian.

SEC. 25. When any guardian, appointed either by a testator or the judge of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, or shall neglect to perform any duty imposed on him by law, or the order of the court, the judge of probate, after notice to such guardian, and all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the judge of probate may appoint another in his place.

Resignation.

Marriage of
female ward.

SEC. 26. The marriage of any female who is under guardianship, as a minor, shall terminate such guardianship as to the guardian's care and custody of the person of his ward; but such guardian shall continue the management of all the estate of his ward until she shall arrive at the age of twenty-one years, unless he shall be sooner discharged by the judge of probate; and the guardian of any minor, spendthrift, insane or other person, may be discharged by the judge of probate, when it shall appear to him on application of the ward, or otherwise, that such guardianship is no longer necessary. And the probate court shall have power to appoint guardians of infant married women on proper application therefor.

Proceedings in
case of em-
bezzlement,
etc.

SEC. 27. Upon complaint made to the judge of probate by any guardian, or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects, or any instrument

in writing belonging to the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

SEC. 28. Every guardian of a person residing without this State and having an estate within this State, shall give bond to the judge of probate, in like manner, and with the like condition, as is hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian shall be confined to such estate and effects as shall come to his hands in this State. Bond of guardian of non-resident.

SEC. 29. The guardianship which shall be first lawfully granted of any person residing without the State, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county. First guardianship granted to extend to whole estate.

SEC. 30. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he shall also have such compensation for his services, as the court in which his accounts are settled, shall deem to be just and reasonable. Guardian's compensation.

SEC. 31. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them. Account of joint guardians.

SEC. 32. Every guardian appointed under the provisions of the sixth subdivision of section one of this chapter, shall have the care and custody of the person of his ward, and upon the order of the judge of probate, may cause him or her to be taken to and restrained in any suitable State institution, asylum, hospital for medical or sanitary treatment or care, or hospital for the insane. Guardian to have custody.

SEC. 33. Every such guardian shall at least once in each year, and as often as required by the judge of probate, render a report to the judge of probate, verified by his oath, showing the condition of his ward, what medical or sanitary treatment or care he or she has been subjected to, and what reason, if any, there is for the continuance of such guardianship. Report.

SEC. 34. The rate of charge for insane patients, and the rules for admission of insane patients, so far as not inconsistent, shall apply to such patients as are committed under the provisions of section thirty-two of this chapter. Charges for insane patients.

SEC. 35. In all cases where any guardian and his ward may both be residents of any other state or territory of the United States, and such ward may be entitled to property of any description in this State, such guardian on producing to the probate court or other court of competent jurisdiction of the county in which such property or the principal part thereof is situated, a full and complete transcript from the records of a court of competent jurisdiction in the state or territory in which he and his ward reside, duly exemplified Removal of property of non-resident ward.

or authenticated, showing that he has been appointed guardian of such ward, and that he has given a bond and security in the state or territory in which he and his ward reside, in double the value of the property of such ward, and also showing to such court that he still remains such guardian, and that a removal of the property of such ward will not conflict with the terms and limitations attending the right by which the ward owns the same, or be or become prejudicial to his interest therein, then such transcript may be entered of record in such court, and such guardian shall be entitled to receive letters or a certificate of guardianship of the estate of such ward from such court, which shall authorize him to demand, sue for, and recover any such property and remove the same to the place of residence of himself and his ward; and such court may order any resident guardian, executor, or administrator having any of the estate of such ward to deliver the same to such non-resident guardian: *Provided*, All debts in favor of residents or citizens of this State known to exist against such estate, whether due or to become due, have been first paid or payment tendered: And *Provided also*, That the benefit of this section shall not extend to any resident of any state or territory in which a similar law to this does not now exist or may not hereafter be passed.

Proviso,
payment
of debts.

Proviso,
state comity.

When
preceding
section does
not apply.

SEC. 36. The preceding section shall not apply to any case where the parent of the ward, being a resident of this State at the time of his death, shall have appointed by last will and testament a guardian or guardians for said ward, and which guardian or guardians are still living and residing in this State; unless the assent of such testamentary guardian or guardians to the removal of said property shall be satisfactorily shown to the court to which application shall be made as hereinbefore provided.

Ward, change
of residence,
etc.

Proviso,
consent
of court.

SEC. 37. When minors, incompetent or other persons shall have had a guardian duly appointed by the probate court of any county in this State, and such ward shall have become a resident of and have obtained a legal domicile in another county, a guardian may be appointed over said ward by the probate court of the county of such domicile: *Provided*, That such guardian shall not be appointed without the consent of the probate court which appointed the previous guardian. Upon the appointment of such guardian, the guardian first appointed shall account to the guardian appointed in the new domicile of the ward, and shall turn over to such guardian all the property and estate in his hands, belonging to said ward; and upon such accounting and turning over of all such property and estate, he shall be discharged as such guardian.

CHAPTER LIX.

Of the Sale of Lands by Executors, Administrators and Guardians.

SECTION 1. Real estate of a deceased person or any interest therein, may be sold upon petition of the executor or administrator under license of the probate court in the following cases: Sale of real estate.

1. When it shall appear to the court that the personal estate of a deceased person in the hands of his executor or administrator is insufficient to pay the debts of the deceased and the charges of administering his estate, or whenever it shall appear to the court that it is for the best interest of all persons interested in the estate that his real estate or some part thereof be sold for such purpose in lieu of disposing of the personal estate; When may be sold.

2. When it shall appear to the court that a sale of such real estate is necessary to preserve the estate or to prevent a sacrifice thereof, or to carry out the provisions of a will;

3. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his personal property is insufficient to pay such legacy, together with his debts and charges of administration;

4. When a testator shall have given real estate to two or more persons, or when a person shall have died intestate, and it shall appear to the court that it is necessary or will be for the best interests of the persons interested in said real estate as such devisees, legatees or heirs, to sell the same for the purpose of distribution: *Provided*, That application under this subdivision shall be approved in writing by the persons owning a majority in interest of the real estate proposed to be sold, which approval may be given by the guardians of persons under guardianship. In case of sale under any of the subdivisions of this section the widow, if any, shall not be entitled to a greater interest in the estate than she would have received had such real estate been distributed instead of being sold: *Provided further*, That if it shall be made to appear to the probate court that persons owning a majority in interest of the real estate proposed to be sold are desirous of having such real estate sold for any of the purposes or reasons set forth in this section, and the executor or administrator neglects or refuses to petition for the sale as above provided, then and in such cases the court shall entertain a petition for such purpose from persons owning a majority in interest of such real estate and the court may license such sale and make such order in the same manner as if petitioned by the executor or administrator; and thereupon it shall be the duty of such executor or administrator to file a bond and make such sale in the same manner as if petition for such sale had been originally made by the executor or administrator, and the

Provido, approval of application.

Further proviso, petition for sale by majority in interest.

neglect or refusal of such executor or administrator to perform such order shall constitute sufficient cause for removal.

Sale of real
estate of
persons under
guardianship.

SEC. 2. The real estate or any interest therein of any person under guardianship may be sold under license of the probate court in the following cases:

1. When the personal property of such person is insufficient to pay his just debts, together with the charges of managing his estate;

2. When the personal property of such person is insufficient to pay the expenses incurred by any county or by the State in the care, support or maintenance of such person, together with the charges of managing his estate;

3. When the income of the estate of any person under guardianship is insufficient to maintain the ward and his family, or to educate the ward when a minor, or the children of such ward;

4. When it shall appear to the court that it would be for the benefit of the ward that his real estate or any part thereof be sold and the proceeds thereof reinvested.

Petition
to court.

Verification.

Order to
appear and
show cause.

SEC. 3. In order to obtain such license, the executor, administrator or guardian shall present a petition to the probate court from which he received his appointment, setting forth the facts upon which such application is based. Such petition shall be verified by the oath of the party presenting the same. If such facts appear by the petition as, if true, would justify the granting of the order applied for, the judge of probate shall thereupon make an order directing all persons interested in the estate, to appear before him at a time and place therein to be specified, not less than three weeks, and not more than six weeks from the time of making such order, to show cause why a license should not be granted to the executor, administrator or guardian applying therefor, to sell such real estate, or so much thereof as shall be necessary and proper for the purposes set forth in the petition.

Service
of copy.

Proviso,
assent of
parties inter-
ested.

SEC. 4. A copy of such order to show cause shall be served on all persons interested in the estate at least fourteen days before the time appointed for hearing the petition, or by publication, in the manner provided in section nine of chapter fifty-two of this act: *Provided, however,* If all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

Who con-
sidered in-
terested
in estate.

SEC. 5. All those who are next of kin, and heirs apparent or presumptive of the ward, and except in case of minors, the superintendents of the poor of the county of which the ward is an inhabitant, or in which he resides, shall be considered as interested in the estate, and may appear as such and answer to the petition of the guardian; and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales as contained in this chapter.

SEC. 6. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing to such sale of all the persons interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application. Hearing.

SEC. 7. The executor, administrator or guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner, and with the like effect as in other cases. Testimony taken.

SEC. 8. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned. Sale of whole estate.

SEC. 9. In all cases, the order of the court granting a license for the sale of real estate, shall specify therein the purpose for which such sale is authorized. Order of sale to specify purpose.

SEC. 10. No license to sell real estate of a deceased person, except for the purpose of distribution, shall be granted, if any of the persons interested in the estate shall give bond to the judge of probate, in such sum and with such sureties as he shall direct and approve, with condition to pay all the debts, and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor, within such time as the judge of probate shall direct. When license to sell not to be granted.

SEC. 11. The bond mentioned in the preceding section, shall be for the security, and may be prosecuted for the benefit of the creditors, as well as the executor or administrator. For whose benefit bond may be prosecuted.

SEC. 12. If the judge of probate shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the purposes set forth in such petition, or if such sale be assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole, or so much, and such part of the real estate described in the petition, as he shall judge necessary or beneficial. When court may order sale.

SEC. 13. The order shall specify the lands to be sold, and the judge of probate may therein direct the order in which several tracts, lots or parcels, shall be sold; and if it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the judge of probate shall order that part descended to heirs to be sold Order to specify lands, and order of sale.

before that so devised; and if it appear that any lands devised or descended have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

Oath of
executor, etc.

SEC. 14. Every executor, administrator or guardian authorized to sell real estate as provided in this chapter, shall, before making such sale, take and subscribe an oath before the judge of probate, or some other officer authorized to administer [administer] oaths, that in disposing of the real estate which he is licensed to sell, he will exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested; which oath shall be filed with the judge of probate before confirmation of the sale.

Further bond
required.

SEC. 15. In all cases where license is granted for the sale of real estate, the judge of probate shall require a further bond from the executor, administrator or guardian with sufficient sureties, conditioned to account for all the proceeds of the sale of such real estate; all of such proceeds shall be deemed assets in the hands of the executor, administrator or guardian, in like manner as if the same had been originally part of the goods and chattels of the deceased, and the sureties on his administration bond shall be accountable and chargeable therefor, as well as the sureties on such additional bond.

Copy of order
of sale to be
delivered to
executor, etc.

SEC. 16. Upon the making of such order, and the filing with the judge of probate of such bond as is required by the provisions of this chapter, a certified copy of the order of sale shall be delivered by the judge of probate to the executor, administrator or guardian, who shall thereupon be authorized to sell the real estate as therein directed, within one year after the making of the order, but not after that period.

Sale of
reversion
of dower.

SEC. 17. License to sell real estate, as provided in this chapter, may extend to the reversion of the dower of the widow of a deceased person, and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

Notice of sale.

SEC. 18. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the township or ward in which the land is situated at least six weeks before the sale, and shall be published once in each week for six weeks successively next before such sale in a newspaper printed and circulated in the same county if there be one, and if there be none, then in such newspaper as the court may direct, in which notice the lands and tenements to be sold shall be described with common certainty.

Adjournment
of sale.

SEC. 19. If, at the time appointed for any such sale, the executor, administrator or guardian shall deem it for the interest of all persons concerned therein that the sale should be postponed, he may adjourn the same from time to time, not exceeding in all three months.

SEC. 20. In case of such adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

Notice of
adjournment.

SEC. 21. An affidavit of the executor, administrator or guardian, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this chapter, being made before the judge of probate, or some other officer authorized to administer oaths, and filed and recorded in the probate court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving the notice.

Affidavit of
notice of sale.

SEC. 22. If it shall appear to the judge of probate that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified cannot be obtained, he shall make an order confirming such sale, and directing conveyances to be executed, but if the purchaser shall for a period of twenty days thereafter neglect to pay or cause to be paid the sum bid at such sale, the court may in its discretion revoke such confirming order, and vacate such sale upon the application of the executor, administrator or guardian, making such sale, and after such notice to the purchaser as the probate court may direct and shall thereupon direct another sale to be had of which notice shall be given, and the sale shall in all respects be conducted as if no previous sale had taken place.

When court
to confirm
sale.

SEC. 23. No order for the confirmation of any report of sale of real estate by an executor, administrator or guardian, shall be made until at least eight days after filing such report, unless all parties interested in the estate shall in person, by attorney or guardian, consent in writing to such confirmation, or unless, in the opinion of the court, such delay shall be clearly injurious to the estate. Any person interested therein desiring to object to such confirmation may file objections in writing setting forth the reasons therefor.

When order of
confirmation
made.

SEC. 24. Such sale shall be in the county where the lands are situated, at public vendue, between the hours of nine o'clock in the morning, and the setting of the sun the same day.

Sale.

SEC. 25. The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or indirectly purchase, or be interested in the purchase of any part of the real estate so sold, and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

Executor, etc.,
not to be
interested in
purchase.

SEC. 26. On such sale, the executor, administrator or guardian may give such length of credit, not exceeding five years, and for not more than two-thirds of the purchase

Credit on sale.

money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved by the judge of probate, and shall secure the moneys for which credit is given, by a bond of the purchaser, and by a mortgage of the premises sold, with interest payable semi-annually.

Return of
proceedings.

SEC. 27. The executor, administrator or guardian making any sale shall immediately make a return of his proceedings, upon the order of sale in pursuance of which it is made, to the judge of probate granting the same, who shall examine the proceedings, and may also examine such executor, administrator, or guardian, or any other person on oath, touching the same; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale and direct another to be had; of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place.

Vacation
of sale.

Interest in
land held
under
contract.

SEC. 28. If a deceased person at the time of his death, or a person under guardianship at the time of the appointment of his guardian, was possessed of a contract for the purchase of land, his interest in such land and under such contract may be sold on the application of his executor, administrator or guardian, in the same cases and in the same manner as if he had died seized of such land, or as if he had been seized thereof in fee at the time of the appointment of such guardian; and the same proceedings may be had for that purpose, as are prescribed in this chapter in such cases, except as hereinafter provided.

Sale subject
to payments.

SEC. 29. Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor, administrator or guardian, for his benefit and indemnity and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of probate shall approve.

Bond of
purchaser.

Condition
of bond.

SEC. 30. Such bond shall be conditioned that such purchaser will make all payments for such land that shall become due after the date of such sale, and will fully indemnify the executor, administrator or guardian, and the persons so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

Assignment
of contract.

SEC. 31. Upon the confirmation of such sale, the executor, administrator or guardian shall execute to the purchaser an assignment of such contract, which assignment shall vest in such purchaser, his heirs and assigns, all the rights, remedies,

interest and title of the original vendee, or his heirs or assigns in said contract, or the lands so sold.

SEC. 32. The proceeds of every such sale shall be disposed of in all respects in the same manner as the proceeds of the sale of lands in other cases. Proceeds, how disposed of.

SEC. 33. All sales and conveyances of land made by executors, administrators or guardians, pursuant to the provisions of this chapter, shall be subject to all charges thereon, by mortgage or otherwise; and in case the estate shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor, administrator or guardian, as required in this chapter in the case of the sale of a contract for the purchase of land, on which payments are to become due. Sales subject to incumbrances.

Bond of purchaser.

SEC. 34. When an executor, administrator or guardian shall be appointed in any other state, or in any foreign country, on the estate of any person dying or residing out of this State, and no executor, administrator or guardian thereon shall be appointed in this State, the foreign executor, administrator or guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be any real estate of the deceased, or of the ward. Copy of appointment of foreign executor may be filed.

SEC. 35. Upon filing such authenticated copy of his appointment, such foreign executor, administrator or guardian may be licensed by the same probate court to sell real estate, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor, administrator or guardian appointed in this State, and upon giving a like bond, excepting in the particulars in which a different provision is hereinafter made. Foreign executor, etc., may be licensed to sell, etc.

SEC. 36. In all cases of a sale by any executor, administrator or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any probate court, by virtue of the provisions of this chapter, whether such executor, administrator or guardian was appointed in this State or elsewhere, the surplus of the proceeds of the sale, remaining on the final settlement of the accounts, shall be considered as real estate, and disposed of among the persons, and in the same proportions, as the real estate would have been by the laws of this State, if it had not been sold. Surplus to be considered real estate.

SEC. 37. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, by an executor, administrator or guardian, and if it shall appear to the court, either that the petition, or the objection thereto, is unreasonable, the court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof. When court may award costs.

SEC. 38. In case of an action relating to any estate sold by an executor, administrator or guardian, in which an heir or other person claiming under the deceased, or in which the When sale not avoided by irregularities, etc.

ward or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear:

1. That the executor, administrator or guardian was licensed to make the sale by the probate court having jurisdiction;

2. That he gave a bond which was approved by the judge of probate, in case a bond was required upon granting a license;

3. That he took the oath prescribed in this chapter;

4. That he gave notice of the time and place of sale, as in this chapter, prescribed; and

5. That the premises were sold accordingly, and the sale confirmed by the court, and that they are held by one who purchased them in good faith: *Provided*, That in all cases where any person, or those under whom he holds, has been in actual possession of any lands or premises for the period of ten years, holding and claiming under and by virtue of a deed executed by any executor, administrator or guardian, such deed shall be prima facie evidence of the regularity of all the proceedings from and including the application to sell such lands or premises, to the date and execution of the deed, inclusive.

Proviso,
possession for
ten years.

Irregularities
cured.

SEC. 39. If the validity of a sale made by an executor, administrator or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator, or intestate, or of the ward or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity in the proceedings: *Provided*, It shall appear that the executor, administrator or guardian was licensed to make the sale by a probate court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Proviso,
license to sell.

Damages for
misconduct
in sale.

SEC. 40. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian, in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in a suit on the probate bond, or otherwise, as the case may require.

Liability for
fraudulent
sale, etc.

SEC. 41. Any executor, administrator or guardian, who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages to be recovered in an action on the case by the person having an estate of inheritance therein.

Private Sale.

Sale at
private sale.

SEC. 42. In any case where license to sell real estate is applied for, the judge of probate may, in his discretion, after due notice to all persons interested as required by this chapter, and after taking, or causing to be taken, the testimony

of two or more credible and disinterested freeholders, under oath in writing administered by said judge of probate or by the judge of probate of the county in which the real estate is situated, grant a license to the executor, administrator or guardian to dispose of said real estate at private sale, at the highest price obtainable, not less than the value thereof, as determined by said judge of probate, which sale shall be confirmed and approved by said judge of probate before any deed passing the title to said real estate so sold at private sale shall be valid and effectual: *Provided*, That said freeholders shall be well known to the judge taking such testimony to be credible witnesses and when taken by a judge not having the estate in charge shall be paid for and transmitted the same as depositions in other courts, and in either case such testimony shall be filed and kept with other papers relating to the sale of said real estate: And *Provided further*, That the provisions of this chapter relating to the oath and bond of the executor, administrator or guardian before a sale shall be applicable to sales under the provisions of this section, and all other provisions of this chapter, except where plainly inapplicable, shall be applicable to sales under this section.

Proviso,
credibility of
freeholders.

Further
proviso,
oath and bond
of executor,
etc.

SEC. 43. If the estate of a ward is sold for a purpose mentioned in the first three subdivisions of section two of this chapter, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Application of
proceeds of
sale for
support, etc.

SEC. 44. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in the fourth subdivision of the second section of this chapter, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Investment
for benefit
of ward.

Sale of Homesteads for Payment of Debts, and Expenses of Administering Estates.

SEC. 45. Whenever application shall be made to a probate court for an order to sell the real estate of a deceased person or a person under guardianship for the purpose of paying his debts or the expenses of administering his estate it shall be the duty of the court to ascertain and determine, at the hearing of such application, what, if any, of such real estate in fact constituted the homestead of the deceased at the time of his death, or at the time of the appointment of such guardian, and to fix, by its decree, the location and description thereof without reference to its value, but not exceeding in

Probate court
to locate
homestead.

Real estate not included in homestead first sold.	extent the quantity exempted by law from the payment of debts. If it shall appear at the hearing of such application that there is real estate not included in the homestead as thus decreed that may be used for the payment of debts, the same shall be first sold and the proceeds thereof applied according to law. If it shall appear that there is no real estate other than that thus decreed to be the homestead that may be used for the payment of debts, or, if the proceeds of the sale of the real estate, other than such homestead, shall, upon the report and approval of such sale, prove insufficient for the purposes thereof, the probate court may order the sale of the homestead, or a division of the same and the sale of a portion thereof, under the circumstances and in the manner hereinafter provided.
Sale of homestead, or division thereof.	
Appraisal of homestead.	SEC. 46. Before a sale or division of the homestead is ordered it shall be examined and appraised by three disinterested persons, who shall be appointed by the probate judge and who shall be sworn to the faithful discharge of their trust. The persons so appointed shall, with reasonable diligence, examine the homestead and appraise the same at its fair cash value, and in case such value shall exceed fifteen hundred dollars they shall determine whether or not the premises can be divided without material loss or injury, so that a homestead not exceeding in value fifteen hundred dollars may be set apart for the benefit of the widow or family of the deceased, the person under guardianship, or his wife or family. Upon the completion of such examination and appraisal they shall report under their hands to the probate court their appraisal of the fair cash value of the homestead, and if such value exceed fifteen hundred dollars they shall also report whether or not the homestead as fixed by the decree of the probate court can be so divided, and a homestead, of which they shall give the metes and bounds, and in which they shall include the dwelling house and its appurtenances, not exceeding in value fifteen hundred dollars, can be set apart for the benefit of the widow or family of the deceased, or the person under guardianship, or his wife or family.
Report.	
Confirmation of report.	SEC. 47. At any time after the filing of such report and before the estate shall have been finally closed, the probate court, at the request of any person interested in the estate, shall order all parties interested therein to show cause why such report should not be confirmed. Notice of the time to show cause shall be given in accordance with the provisions of section nine of chapter fifty-two of this act. At the time appointed, or at some adjourned time, the probate court shall hear and consider all objections to the confirmation of the report, whether of law or fact, and shall confirm the report unless it shall be satisfied that the appraisal is materially unfair or unjust, or that the division if recommended, is in some substantial respect improper, in either of which events the court shall disapprove the report and order a new
Disapproval of report.	

examination and appraisal. Whenever the court shall order a new examination and appraisal it shall appoint three other disinterested persons, who shall proceed as above provided in the case of the persons first appointed, subject to like review and action by the probate court.

SEC. 48. Upon the confirmation of the report the probate court shall proceed as follows: Proceedings
after con-
firmation.

1. If the appraised value of the homestead, as fixed by the probate court in the manner provided in the preceding sections of this chapter, shall not exceed fifteen hundred dollars, no further action shall be taken or had in the matter until such homestead shall cease to be exempt from the payment of debts;

2. If the appraised value of the homestead, as fixed by the probate court, in the manner provided in the preceding sections of this chapter shall exceed fifteen hundred dollars, and it shall have been reported as above provided, that the premises can be divided, and that a homestead not exceeding in value fifteen hundred dollars, can be set apart for the benefit of the ward, wife, widow or family, the probate court shall order that the latter homestead be set apart for the benefit of the ward, wife, widow or family, until the same shall cease to be exempt from the payment of the debts, and shall further order that the remainder of the premises be sold for the payment of debts and the expenses of administration in the manner provided by law;

3. If the appraised value of the homestead, as fixed by the probate court in the manner provided in the preceding sections of this chapter, shall exceed fifteen hundred dollars, and it shall have been reported that the premises cannot be divided, and a homestead not exceeding in value fifteen hundred dollars be set apart for the benefit of the ward, wife, widow or family, the probate court shall order the whole of such premises to be sold according to law. The executor, administrator or guardian shall reserve and retain from the proceeds of such sale the sum of fifteen hundred dollars for the benefit of the ward, wife, widow or family, as the case may be, and shall apply the remainder, so far as the same shall extend, or so far as the same shall be necessary, in payment of the debts and the expenses of administering his estate. The sum so reserved and retained by the executor, administrator or guardian shall be invested by the executor, administrator or guardian with the approval of the probate judge, either in the purchase of a new homestead, or in proper securities for the benefit of the ward, wife, widow or family, as may seem best, and the same, or the property or securities in which it shall be invested, shall remain exempt from the payment of debts and the expense of administering his estate in like manner as a legal homestead would have remained exempt, and shall finally descend according to the laws of this State governing the descent of real property; or upon termination of guardianship to be paid to the ward.

Mortgaging Estates of Deceased Persons and Persons Under Guardianship.

Judges of probate may authorize borrowing money.

SEC. 49. The several judges of probate may by order license and empower any executor, administrator or guardian. for the purpose of paying the debts of any deceased person or ward or against the estate of any deceased person or ward, or paying the legacies provided in the last will of any deceased person, or supporting any ward, or making necessary repairs to buildings belonging to such estate or ward, or for the purpose of completing the erection of buildings begun by such deceased person or ward or by some person in his behalf or for his benefit, to borrow money by mortgaging or otherwise pledging the estate of such deceased person or ward, or any part thereof: *Provided*, The authority herein given to mortgage or pledge estate for the payment of debts and legacies shall extend to such estate only as might be sold for such purpose, except a mortgage or other lien exists against the homestead of such deceased person or ward, in which case the executor administrator or guardian may be authorized to mortgage such homestead for sufficient to pay such mortgage or other lien and the necessary expenses connected with such proceedings.

Proviso, to what estate applicable.

How order obtained.

SEC. 50. Such order shall be obtained by a petition to the proper judge of probate, which petition shall contain the like statements as are required in a petition for license to sell such estate by an executor, administrator or guardian, of which application the same notice shall be given, with the same effect, as is required in the case of an order to sell the estate of deceased persons or wards; and such order shall specify the amount to be secured by such mortgage or other security, the rate of interest to be given, and the length of time for which such mortgage or other security shall be given, and also the description of the property to be mortgaged or otherwise pledged; which mortgage or other security the said executor, administrator, or guardian shall execute with all the formalities required by law for such securities.

Specifications of order.

Bond.

SEC. 51. Before executing such order, such executor, administrator or guardian, shall give bond in like manner and form, as near as may be, as is required from them by law, in case of the sale of such estate, to faithfully execute the trust, and apply and account for moneys thereby received, and said proceedings of the said executor, administrator or guardian, in mortgaging or otherwise pledging such estate, shall be reported to the judge of probate, and by him be subject to be confirmed or vacated, and new proceedings to be had to the same extent and in the same manner as near as may be, as provided by law in the case of the sale of such estate.

Action to be approved by judge of probate.

CHAPTER LX.

Specific Performance of Contracts of Deceased Persons and
Persons Under Disability.

SECTION 1. When any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance.

When court
may decree
conveyance.

SEC. 2. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, or a petition of such executor or administrator setting forth the facts upon which such claim is predicated, the judge of probate shall make an order appointing a time and place for hearing such petition, a copy of which order shall be served as provided in section nine of chapter fifty-two of this act.

Petition.

Order for
hearing.

SEC. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the probate court, and defend against such petition; and the court may examine on oath the petitioner, and all others who may be produced before him for that purpose.

Hearing.

SEC. 4. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of probate shall be satisfied that the grantee in such contract is entitled to a conveyance of the real estate described in such petition, according to the provisions of this chapter, he shall thereupon make a decree authorizing and directing the executor or administrator to make and execute a conveyance thereof to such grantee.

Decree
authorizing
conveyance.

SEC. 5. Any person interested may appeal from such decree to the circuit court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree, and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Appeal
from decree.

Record of
certified copy
of decree.

SEC. 6. The jurisdiction herein conferred upon the probate court shall not be deemed to be exclusive of the jurisdiction of the circuit court in chancery, but any person entitled to such specific performance, may at his election, file his bill in equity therefor.

Bill in
equity for
specific per-
formance.

Effect of conveyance.

SEC. 7. Every conveyance made in pursuance of a decree of the probate court or the court of chancery, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living, and then executed the conveyance.

Certified copy of decree may be recorded.

SEC. 8. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the registry of deeds in the county where the lands lie, or a copy of the decree of the court of chancery for that purpose, duly certified by the clerk of said court and recorded as aforesaid, shall give the person entitled to such conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Effect.

Decree may be enforced by process.

SEC. 9. The recording of any decree, as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by any proper process, according to the course of proceedings therein.

Heirs of person entitled may prosecute or commence proceedings.

SEC. 10. If the person to whom the conveyance was to be made, shall die before the commencement of proceedings according to the provisions of this chapter, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced; and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

Conveyance of real estate by guardian of minor.

SEC. 11. Whenever in the distribution or partition of the estate of any person, whether such person died testate or intestate, any moneys due or to become due upon a contract in writing for the sale of real estate made by such deceased in his lifetime, or any such contract or lands therein described shall be assigned or set off to any minor, the probate court having jurisdiction of the estate of such minor, may make a decree authorizing and directing the guardian of such minor to convey such real estate to the person entitled thereto, in like cases, and upon the presentation of a like petition, either by the person entitled to such conveyance, or by the guardian of such minor, and the same proceedings shall thereupon be had, and with like effect as herein provided for conveyance by executors and administrators.

Number of contracts may be embraced in petition.

SEC. 12. The guardian of any such minor may, in the cases provided for in the last section, embrace any number of such contracts that may have been so assigned and set off to such minor, in one petition, and such probate court, on the hearing of such petition, may decree a conveyance of the real estate pursuant to the terms of such contracts, to the several per-

sons entitled thereto in the same manner, and with like effect as hereinbefore provided.

Of Specific Performance by Guardians.

SEC. 13. When any person who is bound by a contract in writing to convey real estate, shall subsequently become insane, incompetent or a spendthrift, and a guardian shall have been duly appointed for such person, before the making of the conveyance of such real estate, the probate court may make a decree authorizing and directing such guardian to convey such real estate to the person entitled thereto, in all cases where such ward, if competent, might be compelled to execute such conveyance. When decree of performance made.

SEC. 14. All the proceedings in such cases shall conform as nearly as possible to the statutes authorizing the specific performance by executors and administrators of the contracts of deceased persons for the conveyance of real estate as contained in this chapter. Proceedings to conform with law for executors, etc.

CHAPTER LXI.

Of Testamentary and Other Trustees.

SECTION 1. If a testator has omitted in his will to appoint a trustee in this State, and if such appointment is necessary to carry into effect the provisions of the will, the probate court of any county in which the will is admitted to probate shall at once give notice, as provided by this chapter, to all persons interested. Upon petition of any beneficiary under such will, to said probate court, praying for the appointment of a trustee, such probate court after notice as provided in this chapter to all persons interested, of the filing of said petition, shall appoint a trustee, who shall have the same powers, rights and duties, and in whom the estate shall vest, in like manner as if he had been originally appointed by the testator. Appointment of trustees.

SEC. 2. When lands in this State are held in trust for persons resident here by a trustee who derives his appointment or authority from a court having no jurisdiction within this State, such trustee shall, on petition made to the probate court in the county in which the lands lie, and after due notice, as provided by this chapter, be required to take out letters of trusteeship from said court; and, upon his neglect or refusal to comply with such order, the court shall declare such trust vacant, and shall after notice to all parties interested appoint a new trustee in whom the trust estate shall vest in like manner as if he had been originally appointed or authorized by said court. Letters of trusteeship.

SEC. 3. Every testamentary trustee before he enters upon his duties as trustee, shall give bond, with sufficient sureties, in such sum as the probate court for the county in which the Bond of trustee.

will is proved or allowed may order, payable to the judge of said court and his successors, with conditions substantially as follows:

1. To make and return to the probate court at such time as it may order, a true inventory of all the real and personal estate belonging to him as trustee, which, at the time of making such inventory, shall have come to his possession or knowledge, or to the possession of any other person for him;

2. To manage and dispose of all such estate, and faithfully to discharge his trust in relation thereto, according to law and the will of the testator;

3. To render upon oath at least once a year, until his trust is fulfilled, a true account of the property in his hands and of the management and disposal thereof, and also to render such account at such other times as said court may order;

4. At the expiration of his trust to settle his account in the probate court, and to pay over and deliver over all the estate remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto;

5. To perform all orders and decrees of the probate court, by the trustees to be performed in the premises.

Letters of
trusteeship.

SEC. 4. When such bond shall be approved by the judge of probate and filed in his office, letters of trusteeship shall be granted by the judge of probate to the trustees as evidence of his authority to act as such.

Statutes
applicable
to bond.

SEC. 5. The provisions of the statutes of this State applicable to the bond of an executor, or to the rights, duties and liabilities of the parties thereto, or any of them, including the release of the sureties, and the giving of a new or additional bond, shall, except as otherwise provided in this chapter, apply to the bond given by a trustee under the terms of this chapter and to the parties thereto.

Inventory.

SEC. 6. After letters of trusteeship are issued, an inventory of the trust property shall be made in the manner as provided by law for the inventory of the estate of a deceased person. But when a trustee is appointed by the probate court as the successor of a prior trustee, the court may dispense with the making and return of an inventory if it appears to be unnecessary, and in such case the condition of the bond shall be altered accordingly.

Appraisal.

SEC. 7. When an inventory is required to be returned by a trustee, the estate and effects shall be appraised by two suitable persons, who shall be appointed and sworn as is required by law with respect to the appraisal of the estate inventoried by an executor.

Neglect to
give bond.

SEC. 8. Every trustee who neglects to give bond in accordance with law, within thirty days after the probate court shall fix the penal sum of said bond, shall be considered to have declined or resigned the trust.

SEC. 9. Every trustee who has heretofore undertaken a trust, and who was not required to give bond by the laws in force at the time of his appointment, shall be required to give bond within sixty days from the time this act takes effect, and the probate court shall fix the penal sum of said bond.

Trustees
heretofore
appointed
required to
give bond.

SEC. 10. When an appointment of a trustee is invalid by reason of an irregularity, or for want of jurisdiction or authority in the court making such appointment, the person so appointed shall be held to account for all moneys, property or assets which have come to his hands as such trustee, or by reason of such appointment, in the same manner as if the appointment had been regular and valid; and any bond given in pursuance of such appointment shall be held to be valid and binding both on the principals and the sureties thereon, and payments to or by a person so appointed, if in other respects properly made, may, with the approval of the probate court, be ratified and confirmed by the trustee who may afterwards be legally appointed.

Invalid ap-
pointment.

Validity
of bond.

SEC. 11. Bonds given by trustees may be put in suit by the order of the probate court for the benefit of any person interested in the estate or trust, and the proceedings in such suit shall be conducted in like manner as provided with respect to suits on bonds given by executors and administrators.

Bonds may
be put in
suit.

SEC. 12. When the sale or conveyance or transfer of any real or personal estate held in trust appears to be necessary or expedient, the probate courts in the several counties, upon petition of a trustee or other party interested, may order, license and empower such sale and conveyance or transfer to be made, and the investment, reinvestment, and application of the proceeds of such sale in such manner as will best effect the objects of the trust.

Transfer of
estate held
in trust.

SEC. 13. The petition to the judge of probate specified in the preceding section shall contain the like statements, as near as may be, as are required in a petition for license to sell real estate by an executor administrator or guardian; and the same notice of such application shall be given and the same oath shall be required, and the same bond shall be given, and the same notice of sale shall be given, and the like proceedings, as near as may be, shall in all respects be had, as in case of the sale of real estate by an executor, administrator or guardian under license of the probate court. But the petition need not set forth or describe any estate of the decedent except that which belongs to the trust. No sale made by a trustee under the provisions of this chapter shall be avoided on account of any irregularity or defect in the proceedings, unless the same irregularity or defect occurring in proceedings taken by an executor, administrator or guardian to sell lands belonging to the estate of a deceased person, under license of the probate court, would suffice to avoid the same.

Petition
to sell.

Proceedings.

Irregularity
of sale.

Mortgage of
trust estates.

SEC. 14. The several judges of probate may, subject to the limitations and restrictions contained in the will creating such trust, by order, license and empower any trustee to mortgage or otherwise pledge any real or personal estate held by him in trust, for the purpose of paying taxes or assessments levied or assessed on the trust estate, or the expenses of the management of such estate; for the purpose of paying the expense of erecting, altering, completing, repairing or improving a building on such estate; for the purpose of paying an existing lien or mortgage on such trust estate, or on a part thereof, or any debt chargeable against the trust estate or for which it is liable; to raise money for any purpose in order to carry out the provisions of the will creating the trust; or the trustee may be authorized to make an agreement for the extension or renewal of any existing mortgage.

How order
obtained.

SEC. 15. Such order shall be obtained by a petition to the judge of the probate court having jurisdiction of the trust. Such petition shall set forth the purpose for which it is desired to mortgage or to otherwise pledge the estate, and shall contain the like statements as are required by this chapter in a petition for license to sell real estate by a trustee, and the same notice of such application shall be given, and with the same effect as is required in the case of an order to sell real estate belonging to the trust. Such order shall specify the amount to be secured by such mortgage, the rate of interest to be given, and the length of time for which such mortgage shall be given, and also the description of the property to be mortgaged; which mortgage the trustee shall execute with all the formalities required by law for such securities.

What order
to specify.

Bond.

SEC. 16. Before executing such order, the trustee shall give bond in like manner and form, as near as may be, as is in this chapter required from him in case of the sale of real estate; and the proceedings of such trustee in mortgaging such estate shall be reported to the judge of probate, and by him be subject to be confirmed or vacated, and new proceedings be had to the same extent, and in the same manner, as near as may be, as is provided by law in case of the sale of real estate by an executor or administrator under license of the probate court.

Duty of court
relative
to transfer
of estate.

SEC. 17. If it appears to the court, upon proceedings under sections twelve or fourteen of this chapter, that the estate which is the subject of the petition may be held in trust for, or that a remainder or contingent interest therein may be limited over to, persons not ascertained or not in being, notice shall be given in such manner as the court may order, to all persons who are or may become interested in such estate, and to all persons whose issue, not then in being, may become so interested; and the court shall in every such case appoint a suitable person to act therein as the guardian ad litem of all persons not ascertained or not in being, who are or may become interested in such estate, the cost of whose

appearance including the compensation of his counsel, shall be determined by the court, and paid, as it may order, either out of the trust estate or by the petitioner, in which latter case execution may issue therefor in the name of the guardian ad litem; and a conveyance, transfer or mortgage, made after such notice and proceedings, shall be conclusive upon all persons, whether in being or not in being, who are or may become interested in the trust, or to whom a remainder or contingent interest in the trust estate may be limited over.

SEC. 18. It shall be the duty of every testamentary trustee to render his account of his administration of his trust within one year after his appointment, and thereafter also annually to render his accounts to the probate court of the county having jurisdiction of the estate or trust, in the manner provided by law for the rendition and settlement of the accounts of executors and administrators. Before the account of any trustee shall be allowed, notice shall be given to all persons interested of the time and place of examining and allowing the same. Such notice shall be given in manner as provided in section nine of chapter fifty-two of this act.

Annual
account.

Notice of
examination
of account.

SEC. 19. It shall be the duty of the judge of probate of such county to notify and require every such trustee to render the accounts provided for in the preceding section, at the times therein specified; and upon the petition of a person interested, absolutely or contingently, in the estate or fund in the hands of a testamentary trustee, or in the application thereof, or of the income or other proceeds thereof, the probate court may, in its discretion make, at any time, an order requiring a testamentary trustee to render his account.

Duty of judge
of probate.

SEC. 20. Where a person is entitled by the terms of the will to the payment of money or the delivery of property by a testamentary trustee, he may present to the probate court a written petition, duly verified, setting forth the facts which entitle him to the payment or delivery, and praying for a decree directing payment or delivery accordingly; and that the testamentary trustee may be cited so [to] show cause why such decree should not be made. If the petitioner is so entitled only upon the happening of a contingency or after the expiration of a certain time, he must show in his petition that his right to the money or other property has become absolute. Upon the presentation of such petition the probate court must issue a citation or give notice of hearing.

Petition of
person en-
titled to
money or
property.

Notice
of hearing

SEC. 21. Upon the return of a citation or proof of the giving of notice, as prescribed in the last section, the probate court shall hear the allegations and proofs of the parties and make such decree in the premises as justice requires. In a proper case the decree may require the testamentary trustee who is unable to deliver personal property to which the petitioner is entitled, to pay the value thereof.

Hearing
and decree.

SEC. 22. Where it appears upon the presentation of a petition, as prescribed in section twenty of this chapter, that

Additional
parties
brought in.

a decree made pursuant to the prayer thereof might affect the rights of other persons with respect to the estate or fund held by the testamentary trustee, the citation must also be directed or notice given to those persons. Where that fact appears upon return of the citation or upon the hearing, and it also appears presumptively that the petitioner is entitled to a decree, all the persons whose rights may be so affected must be brought in by supplemental citation or notice before a decree is made.

Petition for
settlement
of account.

Proceedings
thereupon.

Examination
of account.

When court
may order
final settle-
ment.

Trustee to
show cause
for not
rendering
account.

SEC. 23. When the trust, or one or more distinct or separate trusts created by the will, have been or are ready to be fully executed, a testamentary trustee may present to the probate court his account with a petition, duly verified, setting forth the facts, and praying that his account may be finally settled; and that all the persons who are entitled, absolutely or contingently, by the terms of the will, or by operation of law, to share in the fund or in the proceeds of the property held by the petitioner as a part of his trust, may be cited to attend the settlement. Thereupon the probate court must issue a citation or give notice of hearing. Any person, although not named in the citation, who is beneficially interested in the estate or fund which came into the petitioner's hands, or in the proceeds thereof, or in the application of that estate or fund, or of the proceeds thereof, is entitled to appear upon the hearing and thus make himself a party to the proceeding.

SEC. 24. Upon the return of a citation or proof of the giving of notice as prescribed in the last section, the probate court shall examine the account and hear the allegations and proofs of the parties respecting the same. Any party may contest the account with respect to a matter affecting his interest in the settlement and distribution of the estate.

SEC. 25. In either of the following cases the probate court may compel a final judicial settlement of the account of a testamentary trustee:

1. Where the trustee has been removed or for any other reason his powers have ceased;

2. Where the trust, or one or more distinct and separate trusts, created by the terms of the will, have been executed or are ready to be executed; so that the persons beneficially interested are by the terms of the will, or by operation of law, entitled to receive any money or other property from the trustee.

SEC. 26. A petition praying for a final judicial settlement as prescribed in the last section, and that the testamentary trustee may be cited to show cause why he should not render and settle his account, may be presented by any person beneficially interested in the execution of any of the trust; or by any person duly qualified in behalf of an infant so beneficially interested; or by a surety in the bond of the testamentary trustee given as prescribed in this chapter, or by the legal representatives of such a surety; upon the presen-

tation of the petition, the judge of probate shall issue a citation accordingly, unless the account of the testamentary trustee has been judicially settled within a year before the petition is presented; in which case the judge of probate may, in his discretion, entertain or decline to entertain the petition.

SEC. 27. Upon the return of such citation, the trustee may be required to account, within such time and in such manner as the probate court shall direct, and attend, from time to time, before the probate court for that purpose. If the trustee fails to comply with such order, the probate court may remove him from his trust, and take such other proceedings, and make such order or decree, as justice may require. The probate court shall also have power to issue supplemental citations, or to give such supplemental notice as to it may seem fit, directed to the persons to whom notice must be given upon the petition of a trustee for a judicial settlement of his account, and requiring them to attend the accounting.

Trustee may
be required
to account.

SEC. 28. Upon a judicial settlement of the account of a testamentary trustee, a controversy which arises respecting the right of a person to share in the money or other personal property to be paid, distributed or delivered over, must be determined in the same manner as other issues are determined. If such a controversy remains undetermined after the determination of all other questions upon which the distribution of the fund or the delivery of the personal property depends, the decree shall direct that a sum sufficient to satisfy the claim in controversy, or the proportion to which it is entitled, together with the probable amount of the interest and costs, and, if the case so requires, that the personal property in controversy be retained in the hands of the accounting party; or that the money be deposited in a safe bank or trust company, subject to the order of the probate court, for the purpose of being applied to the payment of the claim, when it is due, recovered or settled; and that so much thereof as is not needed for that purpose be afterwards distributed according to law.

Rights of
certain
persons to
personal
property.

SEC. 29. A testamentary trustee may, at any time, present to the probate court a written petition, duly verified, praying that his account may be judicially settled; that a decree may thereupon be made allowing him to resign his trust and discharging him accordingly; and that all persons who are entitled, absolutely or contingently, by the terms of the will, or by operation of law, to share in the fund or estate, or the proceeds of any property held by the petitioner, as a part of his trust, may be cited to show cause why such a decree should not be made. The petition must set forth the facts upon which the application is founded; and it must in all other respects conform to a petition presented for a judicial settlement of the account of a testamentary trustee, as prescribed in this chapter. The judge of probate may, in his discretion, entertain or decline to entertain the petition. If

Petition to
be allowed
to resign.

Proceedings.

he entertains it, the proceedings must be in all respects the same as upon a petition for a judicial settlement of the petitioner's account, except that upon the hearing the judge of probate must first determine whether sufficient reasons exist for granting the prayer of the petition; and if he determines that they exist he shall make an order accordingly, and allowing the petitioner to account for the purpose of being discharged. Upon the petitioner's fully accounting and paying all money belonging to the trust and delivering all books, papers and other property of the trust in his hands either into the probate court or as the judge of probate directs, a decree may be made accepting his resignation, and discharging him accordingly.

Petition for
removal
of trustee.

SEC. 30. Upon the written petition, duly verified, of any person beneficially interested in the execution of the trust setting forth the facts and praying for the removal of a testamentary trustee, the probate court may remove such trustee in any of the following cases:

Reasons
therefor.

1. Where he has become or is insane or otherwise incapable of discharging his trust or evidently unsuitable therefor;

2. Where by reason of his having wasted or improperly applied the money or other property in his charge, or invested money in securities unauthorized by law, or otherwise improvidently managed or injured the property committed to his charge, or by reason of other misconduct in the execution of his trust, or dishonesty, drunkenness, improvidence, or want of understanding, he is unfit for the due execution of his trust;

3. Where he has failed to give a bond as required by an order or decree made as prescribed by law; or has wilfully refused, or without good cause neglected to obey a direction of the judge of probate contained in any other order or decree made as prescribed in this chapter; or any provision of law relating to the discharge of his duty;

Notice and
opportunity
to be heard.

4. Where for any reason it appears essential to the interests of the beneficiaries that such removal be made; the trustee shall have notice of the application and an opportunity to be heard and to show cause why the removal should not be made.

When to
deliver
property to
successor.

SEC. 31. A testamentary trustee who has resigned or been removed shall forthwith deliver all of the property in his possession belonging to the trust to his co-trustee, or to his successor, as the case may be, as soon as such successor has qualified; and shall within thirty days after the acceptance of his resignation, or after the making of the order of removal, as the case may be, or within such time as the probate court may direct render his final account, and the same notice with like effect shall be given and the same proceedings shall be had thereon as herein provided upon the hearing of the final account of a testamentary trustee.

SEC. 32. Where a sole testamentary trustee dies or is by the decree of the probate court removed or allowed to resign, or a vacancy in the office of such trustee is in any manner created, and the trust has not been fully executed, the same court may appoint his successor unless such an appointment would contravene the express terms of the will. Where one or two or more testamentary trustees dies or is by decree of the probate court removed, or allowed to resign, a successor shall not be appointed except where such appointment is necessary in order to comply with the express terms of the will, or unless the court shall be of the opinion that the appointment of a successor would be for the benefit of the cestui que trust. Unless and until a successor is appointed, the remaining trustee or trustees may proceed and execute the trust as fully as if such trustee or trustees had not died, been removed or resigned. The successor shall be appointed in the manner prescribed by section one of this chapter for the appointment of trustees.

When court
may appoint
successor.

SEC. 33. Every account filed in the probate court, as prescribed in this chapter, shall be under oath; but the probate court may allow the account of two or more trustees upon the oath of one of them. Any trustee may be examined on oath upon any matter relating to his account.

Verification.

SEC. 34. In all accountings of trustees under this chapter, the probate court before which such accounting may be had, shall allow to the trustee his reasonable expenses incurred in the execution of his trust, and the same compensation for his services by way of commissions as is allowed by law to executors and administrators; and also, in all cases where to the court a further allowance seems proper, such additional sum for the services of such trustees as to the court in which his accounts are settled may be deemed just and reasonable.

Compensation.

SEC. 35. When provision shall be made by the will for the compensation to the trustee, that shall be deemed a full compensation for his services, if he accepts the trust under the will, unless he shall, by a written instrument filed in the probate court renounce all claim to the compensation provided by the will. In case claim to the compensation provided by the will is renounced, the trustee shall be entitled to his compensation as in other cases.

Provision by
will for com-
pensation.

SEC. 36. In all cases where by the provisions of this chapter, the issue of citation or giving of notice is provided for, such citation or notice shall be served in the manner provided in section nine of chapter fifty-two of this act.

How citation
and notice
served.

SEC. 37. When, upon filing or hearing of an account of a trustee in a probate court, or any petition allowed by this chapter to be filed in such court, it appears to the court that the interest of a person unborn, unascertained or legally incompetent to act in his own behalf is not represented otherwise than by the trustee, the court may, and upon the request of any person interested shall, appoint some competent and disinterested person to act as guardian ad litem for such

Guardian
ad litem.

Oath and
compensation
of guardian.

person and to represent his interests in the matter. **The** person so appointed shall make oath to perform his **duty** faithfully and impartially and shall be entitled to **such** reasonable compensation for his services as the court **may** allow.

Effect
of decree.

SEC. 38. The decree of the court having jurisdiction allowing any account of a trustee shall, except in cases of fraudulent concealment or fraudulent misrepresentation on the part of the trustee, be final and conclusive against all persons interested in such account and legally competent at the date of such decree, and against all other persons who are or may become interested therein, although unborn, unascertained or legally incompetent to act in their own behalf, if their general guardian or guardian ad litem has, after having been duly appointed, assented to such account, or has been heard thereon, or been notified of the hearing thereon; but such decree may be appealed from in the manner provided in the next section of this chapter.

Appeal.

SEC. 39. The decree of the probate court upon the settlement of the account of any testamentary trustee, as herein provided, or in any other order or decree of the probate court, made pursuant to any provision of this chapter, may be appealed from in the manner provided by law for appeals from other orders, sentences, decrees or denials of a judge of probate, and the like proceedings shall be had upon such appeal; and the probate court may, upon the appeal of a trustee from an order removing him, or from an order settling and allowing his account, require him to give a bond in a sum sufficient to cover the property in his hands.

"Testamen-
tary trustee"
defined.

SEC. 40. The term "testamentary trustee" as used in this chapter includes every person, except an executor, an administrator with the will annexed, or a guardian, who is designated by a will or by any competent authority to execute a trust created by a will; and it includes such an executor or administrator where he is acting in the execution of a trust created by the will which is separable from his functions as executor or administrator.

Effect of
proceedings
when same
person is
trustee and
executor.

SEC. 41. Where the same person is a testamentary trustee and also the executor of the will or an administrator with the will annexed upon the same estate, proceedings taken by or against him, as prescribed in this chapter, do not affect him as executor or administrator, or the creditors of, or persons interested in, the general estate, except in one of the following cases:

1. Where he presents a petition praying for the revocation of his letters testamentary or letters of administration, he may also in the same petition, set forth the facts, upon showing which he would be allowed to resign as testamentary trustee; and may thereupon pray for a decree allowing him to resign, and for a citation accordingly;

2. Where a person presents a petition praying for the removal of an executor or administrator with the will annexed

and any of the facts set forth in the petition are made by the provisions of this chapter sufficient to entitle the same person to present a petition praying for the removal of a testamentary trustee, the petitioner may pray for a decree removing the person complained of in both capacities, and for a citation accordingly. In either case proceedings upon the petition for the removal of the testamentary trustee, and for the judicial settlement of his account, may be taken as prescribed in this chapter in connection with, or separately from, the like proceedings upon the petition for the removal of an executor or administrator with the will annexed as the probate court directs.

SEC. 42. The provisions of this chapter apply to a trust created by the will of a resident of this State, or relating to real property situated within the State, without regard to the residence of the trustee or the time of the execution of the will. All trustees created by any last will and testament heretofore admitted to probate, or appointed by any competent authority to execute any trust created by any last will and testament heretofore admitted to probate, shall account under this chapter, and shall, in all respects, be governed thereby. Application of provisions of chapter.

SEC. 43. The provisions of this chapter shall not be construed to in any manner limit, charge, modify or abolish the jurisdiction as it now exists, of the courts of chancery of this State, of, over or concerning such trustees and trust estates, but the same shall remain and continue in all respects as though this chapter had not been passed. Construction of chapter.

Of the Transfer of Personal Estates Held in Trust.

SEC. 44. Whenever any personal estates shall be holden by any trustee or trustees under the last will and testament of any person whose will has been admitted to probate or allowed and filed by any probate court of any county in this State, or under any appointment made by any probate court in any county of this State, for the benefit of any person or persons permanently residing in any other state of the union, such trustee or trustees may transfer, assign and deliver such estate so holden in trust to any trustee or trustees lawfully appointed in the state where such beneficiary resides to be by said trustee or trustees in such state holden upon the same trust as the same is holden in this State. Transfer of personal estate, held in trust.

SEC. 45. The person or persons entitled to the benefit of such estate, or some one of them, shall first procure the appointment of a trustee or trustees in the state where such beneficiary resides, to receive and hold such estate, and shall obtain a copy of such appointment certified conformably to the act of congress relating to the authentication of judicial proceedings between the different states and file the same in the probate court where such will was admitted to probate or where such trustee or trustees received his or their appointment and shall also proffer a petition to said court asking the Proceedings of persons entitled to estate.

court to direct a transfer and delivery of such trust estate to a trustee or trustees so appointed in another state.

Probate court
to authorize
transfer.

SEC. 46. The court of probate aforesaid may at its discretion authorize and direct such transfer, assignment and delivery of such trust estate to the said trustee or trustees so appointed in another state, and said trustee or trustees of such estate after such assignment and delivery of such estate shall procure a written acknowledgment of the reception of such estate, and the same being filed in the probate court where such will was admitted to probate, or where such trustee or trustees were appointed in this State, shall be thereupon discharged from all liability on account of the said trust.

Of Trustees in Certain Cases.

Judge of
probate
may appoint
trustees.

SEC. 47. Whenever it shall become necessary or convenient in the settlement or distribution of the estate of a deceased person, to appoint a trustee to take charge of or invest and distribute any portion of such estate, the judge of probate shall have power, and it shall be his duty, on the application of any person interested in the estate, to appoint such trustee.

Notice.

SEC. 48. No such trustee shall be appointed without notice to all persons interested in the estate, and such notice may be given in the manner provided in section nine of chapter fifty-two of this act.

Bond.

SEC. 49. Every trustee appointed under the foregoing provision shall, before he enters upon the execution of his trust, and before any warrant of appointment shall be delivered to him, give a bond to the judge of probate in such sum and with such surety or sureties as he shall approve, with conditions as follows:

1. To account before the probate court for all moneys and effects received by him as such trustee, at such time or times as the judge of probate shall order;

2. To faithfully perform all the duties of the trust to which he is appointed.

Duty to
trustee.

SEC. 50. It shall be the duty of such trustee to invest or distribute the estate which shall be received by him, according to the direction of his warrant of appointment, and to account for such estate and the interest thereon in such manner and at such times as the judge of probate shall order.

Compensation.

SEC. 51. Such trustee shall receive the same compensation for his services as administrators are by law entitled to for like services.

Prosecution
of bond.

SEC. 52. The bond required by the provision of section forty-nine shall be for the security of all persons interested in the estate, and such bond may be prosecuted in the same manner that executors' and administrators' bonds may be prosecuted, according to chapter sixty-three of this act, and any execution issued upon any judgment rendered upon such

bond, shall be collected for the use of the persons interested, according to their respective interests.

CHAPTER LXII.

Of Accounts by Executors and Administrators.

SECTION 1. Every executor and administrator shall be chargeable in his account with the whole of the goods, chattels, rights and credits of the deceased which may come to his possession; also, with all the proceeds of the real estate which may be sold for the payment of debts and legacies, and with all the interest, profit and income which shall in any way come to his hands from the estate of the deceased.

What executor, etc., chargeable with.

SEC. 2. Every executor and administrator shall account for the personal estate of the deceased, as the same shall be appraised, except as provided in the following sections.

To account for personal estate as appraised.

SEC. 3. An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the personal estate; and he shall account for the excess, when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal, he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

Not to profit or lose, without his fault.

SEC. 4. When the executor or administrator shall sell personal estate, under an order of the probate court, he shall account for the same at the price for which it shall be sold.

To account for proceeds of sale.

SEC. 5. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

When not accountable for debts.

SEC. 6. The executor or administrator shall also be accountable for the income of the real estate while it shall remain in his possession; and if he shall use or occupy any part of it, he shall account for it as may be agreed upon between him and the parties interested, or adjudged by the probate court with their assent; and if the parties shall not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons, to be appointed by the probate court, whose award, being accepted by such court, shall be final.

To account for income of real estate.

SEC. 7. When an executor or administrator shall neglect or unreasonably delay to raise money, by collecting the debts or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

Accountable for loss occasioned by neglect.

To render
annual
account.

SEC. 8. Every executor and administrator shall at the end of one year from the time of his appointment, and at least once in each year thereafter during the continuance of the administration, and at such other times as he may be directed by the probate judge, make and file in the probate court an accurate account of all moneys and other properties in his hands, as such executor or administrator, and of any expenditures and disbursements thereof; in case any such executor or administrator shall fail to make and file his account as herein provided, it shall be the duty of the probate judge to require and notify him so to do.

Notice of
meeting to
examine
accounts.

SEC. 9. The judge of probate shall give at least two weeks' notice of the time and place of meeting for the purpose of hearing and examining such account; which notice shall be given as provided in section nine of chapter fifty-two of this act.

Failure to
appear, etc.

SEC. 10. In case any such executor or administrator shall fail without reasonable cause to appear at the time and place specified in the notice, or to render to the judge of probate a satisfactory statement of his accounts, then it may be lawful, and shall be the duty of the judge of probate to remove such executor or administrator, and to appoint some suitable person in his place, who shall give the same bonds, discharge the same duties, and be liable to the same penalties as is now provided by law.

Removal.

Liability
on bond.

SEC. 11. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, he shall be liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

Costs.

SEC. 12. When costs, in any case, are allowed against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him as for his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding, in which the costs shall be taxed, shall have been prosecuted or resisted without just cause.

Notice of
examination
of accounts.

SEC. 13. Before the administration account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same, as provided in section nine of chapter fifty-two of this act.

Compensation of Executors and Administrators.

Expenses and
commissions.

SEC. 14. When no compensation shall be provided by the will, or the executor shall renounce all claim thereto, he shall be allowed all necessary expenses in the care, management and settlement of the estate, and commissions upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of

the court for the payment of debts, as follows: For the first thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent; and for all above five thousand dollars, at the rate of one per cent; and the same commissions shall be allowed to administrators, or such executor or administrator shall be entitled to receive one dollar for each day and fifty cents for each half day for the time necessarily employed by him in the care and management of the estate together with his actual and necessary disbursements therein.

Rates of commissions.

Per diem.

SEC. 15. In all cases where the executor or administrator shall perform any extraordinary services, not required of an executor or administrator in the common course of his duties, and in cases of unusual difficulty or responsibility, such further allowance may be made as the judge of probate shall deem just and reasonable: *Provided, however,* That such allowance shall only be made upon the filing of a petition therefor, setting forth in detail such extraordinary services, or the reasons for considering the case one of unusual difficulty or responsibility, and the order making any such allowance shall recite in detail the extraordinary services for which such allowance is made, giving the amount allowed for each item thereof, or the reasons for considering the case one of unusual difficulty or responsibility; and in case the order does not contain such recitals as herein required, the same shall be void and of no effect.

Further allowance.

Proviso, petition for allowance.

CHAPTER LXIII.

Of Probate Bonds and the Prosecution Thereof.

SECTION 1. All bonds, required by law to be taken in or by order of the probate court, shall be for such sum, and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall run to the judge of probate, except where they are required by law to run to the adverse party.

Probate bonds, amount and sureties.

SEC. 2. No bond required by law to be given to the judge of probate, and filed in his office, shall be deemed sufficient, unless it shall have been examined and approved by the judge, and his approval thereof endorsed thereon in writing, and signed by him.

Approval.

SEC. 3. A suit may be brought on the bond of any executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

Suit on bond.

SEC. 4. Such a suit may be brought by any person as next of kin, to recover his share of the personal estate, after an [a] decree of the probate court declaring the amount due to

By whom brought.

him, if the executor or administrator shall fail to pay the same when demanded.

When may be authorized.

SEC. 5. When it shall appear, on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee, or other person aggrieved by such maladministration to bring an action on the bond.

When bond to be prosecuted.

SEC. 6. Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a judge of probate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies, or distributive shares, such judge of probate may cause the bond of such executor or administrator to be prosecuted, and the moneys collected thereon shall be applied in satisfaction of such order or decree, in the same manner as such moneys ought to have been applied by such executor or administrator.

In whose name suit brought.

SEC. 7. In all suits upon such bonds, the writ and proceedings shall be in the name of the judge of probate, and when the action is brought for the benefit of any particular person as creditor, next of kin, or legatee, as provided in this chapter, the execution shall express that it is for the use of such creditor, next of kin or legatee, and in such case the person for whose use the action is brought shall be deemed the plaintiff.

Permission to prosecute.

SEC. 8. On the application of any person authorized by this chapter to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fees, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

Judgment for plaintiff.

SEC. 9. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought for the benefit of any particular person, it shall be for the amount due to such person, with costs of suit.

Execution.

SEC. 10. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought by the judge of probate for any breach thereof, in not performing any order or decree of the judge of probate, as mentioned in section six of this chapter, execution shall be awarded for the full value of all the estate of the deceased that shall have come to the hands of such executor or administrator for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or maladministration, with costs of suit.

Disposition of moneys received on execution.

SEC. 11. All moneys received on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such person, other

than the defendant therein, as shall then be the rightful executor or administrator, and such moneys shall be assets in his hands to be administered according to law.

SEC. 12. Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator or guardian, in behalf of those he may represent, in the same manner as by persons living, and of full age, and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

Claims for damages for breach, by whom prosecuted.

SEC. 13. The judge of probate of any county may require a new or additional bond to be given by any executor, administrator, guardian or trustee, whenever he shall deem it necessary and proper, and it shall be the duty of any such probate judge to require such new and additional bond at the end of every five year period, during the continuance of the term of such executor, administrator, guardian or trustee. On the filing of such new bond, the existing bond and the sureties thereon may be discharged from responsibility for any act of the principal therein occurring subsequent to the date of such discharge.

New bond.

Discharge of sureties on old bond.

SEC. 14. Whenever a new bond shall be required under the provisions of the preceding section, the judge of probate shall require written notice thereof to be given to such guardian, administrator, executor or trustee by personal service if he be found within the county, otherwise by registered mail or by publication, as provided in section nine of chapter fifty-two of this act. If after the giving of the notice aforesaid, such guardian, administrator, executor or trustee shall refuse or neglect to give the bond as required, the judge of probate may forthwith and of his own motion, remove such guardian, administrator, executor or trustee.

Notice of new bond required.

Refusal to give; removal.

SEC. 15. The necessary costs incurred in carrying out the provisions of the two last preceding sections and serving the notices herein required, shall be borne by the county in which the proceeding is had, and shall be paid by the county treasurer from the general fund, upon the warrant of the judge of probate approved by the board of supervisors or board of auditors of such county: *Provided*, That whenever it shall appear that there are sufficient funds in the estate, the judge of probate shall by order direct the guardian, administrator, executor or trustee to refund to the county the costs of such proceeding.

Necessary costs, how borne.

Proviso, payment by estate.

SEC. 16. It shall be the duty of the probate court to keep a book wherein shall be entered the dates upon which the bond of each guardian, administrator, executor or trustee was approved by the court, and every five years thereafter the notices herein required shall be served according to the provisions of section fourteen of this chapter, and a new bond required.

Book to be kept by probate court.

SEC. 17. Any surety may, upon his petition to the probate court, be discharged from all further responsibility, if the

Discharge of surety

court, after due notice to all persons interested, deems it reasonable and proper, and the principal may thereupon be required to give a new bond.

Failure to give new bond.

SEC. 18. If the principal fails to give a new bond within such time as is ordered by the court, he may be removed and some other person appointed in his stead.

Liability of sureties of prior bond.

SEC. 19. When a new bond is so required, the sureties in the prior bond are liable for all breaches of the condition committed before the new bond is approved by the judge.

CHAPTER LXIV.

Of Adoption and Change of Names.

Adoption of minor child.

SECTION 1. Whenever any person or persons shall desire to adopt any minor child, and to change the name of such child, and to bestow upon him or her the family name of the person or persons adopting such child, or to adopt any minor child without a change of name, with intent to make such child his, her or their heir, such proceedings shall be had as are hereinafter provided.

Consent required.

SEC. 2. Such adoption, and in case a change of name is desired, such change of name, shall be with the consent of the persons hereinafter described, viz.:

Parents.

1. In case the parents of such child, or either of them, are living, then with the consent of such parents or the survivor of them;

2. In case such child is abandoned by one of its parents, then with the consent of the other parent;

3. In case such child be illegitimate, then with the consent of its mother;

Orphans, etc.

4. In case such child is an orphan or is abandoned by its parents or surviving parent, or by its mother, if it be illegitimate, then with the consent of the nearest of kin or guardian of such child, or of the principal officer of any incorporated asylum, hospital or home, of which such child may be an inmate, or of two superintendents of the poor of the county, or the director of the poor of any city or township of which such child is a resident, or of the principal officer of any institution, public or private, in this State, or elsewhere in whose care such orphan or abandoned child may be;

Surrender of parental relations.

5. In case the parents, or surviving parent of such child, or the mother, if said child be illegitimate, or the parent who has not abandoned it, if such child has been abandoned by one of its parents, has or have surrendered and released, in a writing duly executed and acknowledged before an officer authorized by law to take acknowledgments, all his, her or their parental rights in and to such child, and the custody and control thereof to an incorporated asylum, hospital or home, of which such child may be an inmate, for the purpose of enabling such incorporated asylum, hospital or home to have said child adopted by some suitable person, and its

name changed, when a change is desired, and the child made an heir at law under the provisions of this chapter, then with the consent of the principal officer of any such incorporated asylum, hospital or home, and the aforementioned release executed by parent or parents as aforesaid to said asylum, hospital or home, shall be filed with the instrument of adoption in the probate court;

Officer of
asylum, etc.

6. In case said child is legally an inmate of the State Public School, then with the consent of the superintendent of such school, and the county agent of the State Board of Corrections and Charities for the county wherein the person adopting such child resides;

Inmate of
state public
school.

7. In case said child shall have been committed by an order of a court of competent jurisdiction, to the care of any incorporated association, embracing in its objects the purpose of caring for, or obtaining homes for dependent or neglected children, approved by the State Board of Corrections and Charities, then with the consent of the principal officer of such association;

Officer of
association.

8. In any case heretofore described, if such child be above the age of ten years, then with the additional consent of such child;

Child.

9. In case any person herein designated as a parent with whose consent such adoption or change of name is desired, shall be insane or mentally incompetent, then such adoption or change of name shall be with the consent of the general guardian of such insane or mentally incompetent parent, and such consent of the general guardian shall have the same force and effect as if made by the insane or mentally incompetent person while in sound mind.

Guardian
of parent.

SEC. 3. Said person or persons first above described, together with his or her wife or husband, if any there be, and the person or persons, officer or agent required by the preceding section to consent thereto, shall make under their hands and seals, an instrument in writing, whereby they shall declare that such child, naming him or her by the name he or she has usually borne, is adopted as the child of the person or persons first above referred to, and that he, she or they intend to make such child his, her of [or] their heir, and shall state the full name they desire such child shall bear.

Mode of
adoption.

SEC. 4. The execution of such instrument shall be acknowledged by the person so signing the same, before an officer authorized by law to take acknowledgments of deeds, and thereupon the same shall be presented to, and filed with the judge of probate of the county where such person or persons adopting such child reside.

Acknowledg-
ment.

SEC. 5. Such judge of probate with whom such instrument is filed, shall thereupon make an investigation, and if he shall be satisfied as to the good moral character, and the ability to support and educate such child, and of the suitability of the home of the person or persons adopting said child, he shall make an order to be entered on the journal of the

Investigation
by judge.

Entry on
journal.

Change of name. probate court that such person or persons do stand in the place of a parent or parents to such child, and in case a change of name is desired, that the name of such child be changed to such name as shall be designated in said instrument for that purpose. Whereupon such child shall, in case of a change of name thereafter be known and called by said new name, and the person or persons so adopting such child, shall thereupon stand in the place of a parent or parents to such child in law, and be liable to all the duties and entitled to all the rights of parents thereto, and such child shall thereupon become and be an heir at law of such person or persons, the same as if he or she were in fact the child of such person or persons.

Heir at law.

Adult Persons.

Power to change name of adult. SEC. 6. The probate court of any county of this State shall have power, by an order to be entered on its journal, to change the name of any adult person who has been one year a resident of such county who may make a petition in writing, to such court for that purpose, showing a sufficient reason for such proposed change, and that such change is not sought with any fraudulent or evil intent; and, provided, that notice of intention to make such application shall be published six weeks prior to the making of such application, and for three successive weeks in a newspaper printed and published in said county where the application is to be made, if there be one, or in a newspaper printed and published in an adjoining county, or in the nearest county in which a newspaper is or may be printed and published.

Proceedings.

Fee. SEC. 7. Such judge of probate shall require of the person making such application under the preceding section, to pay over to the county treasurer for the use of the county a fee of three dollars, and shall furnish to said applicant if desired, a certified copy of the order made in such matter.

CHAPTER LXV.

Of Appeals from the Probate Court.

Appeal to circuit court. SECTION 1. In all cases not specifically prohibited by statute, any person aggrieved by any order, sentence, decree or denial of the judge of probate, may appeal therefrom to the circuit court for the same county, by filing a notice thereof with the judge of probate, within twenty days from the date of the act appealed from, giving the reason for such appeal, together with such bond as is required in section eight of this chapter: *Provided, however,* That any probate judge shall have power in all contests over the allowance or disallowance of wills, before the hearing thereof in probate court, to certify the same to the circuit court for the same county for hearing, upon application of any interested party

Proviso, wills.

in said contest, in the same way and subject to the same provisions as are now provided for in appeals from the probate court to the circuit court mentioned in this section: *Provided further*, That the probate judge may on cause shown and without notice extend the time for taking such appeal not to exceed forty days from and after the expiration of said twenty days.

Further proviso, extension of time for appeal.

SEC. 2. No appeal shall lie from any order of the probate court removing any executor, administrator, guardian or trustee for failure to give such new bond or render such account as may be required by order of such probate court in pursuance of law, nor from the appointment of special administrators or special guardians nor from an order granting a rehearing.

Appeal prohibited in certain cases.

SEC. 3. Any executor, administrator or creditor, may appeal from the decision and report of the commissioners on claims, to the circuit court for the same county, if application for such appeal be made in writing, filed in the probate office within twenty days after the returning of the report of the commissioners: *Provided*, The probate judge may extend the time for taking such appeal as provided in section one of this chapter.

Appeal from commissioners on claims.

Proviso, extension of time.

SEC. 4. No appeal shall be allowed from the decision and report of the commissioners, except in the following cases:

When allowed.

1. When such commissioners shall disallow any claim in favor of any creditor or of the estate, in whole or in part, to the amount of twenty dollars;

2. When the commissioners shall allow any claim in whole or in part, and the sum allowed, being objected to, shall amount to twenty dollars, in either of which cases the aggrieved party may appeal.

SEC. 5. When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate as creditor, devisee, legatee or heir, or any surety or sureties on the executor's or administrator's bond, may appeal from such decision in the same manner as the executor or administrator might have done, and the same proceedings shall be had in the name of the executor or administrator: *Provided*, That the person appealing in such case shall, before the appeal shall be allowed, give a bond, to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

When any person interested may appeal.

Proviso, appeal bond.

SEC. 6. When an executor or administrator shall have a claim against the estate which he represents, which shall be disallowed by the commissioners, and he shall take an appeal therefrom to the circuit court, notice of such appeal shall be given to all concerned, by personal service or by publication under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which shall be four weeks before hearing of the appeal.

Executor's, etc., claim against estate.

Notice of appeal.

Amendment
to reasons
for appeal.

SEC. 7. The circuit court to which such appeal is taken, may for cause shown, and upon motion to be heard after reasonable notice shall have been given the opposite party, and upon such terms as may be imposed by said court, allow such amendment or amendments to the reasons assigned for such appeal, as in the opinion of the court justice may require.

Appeal bond.

SEC. 8. The party appealing shall, at the time of filing notice thereof, file with the judge of probate a bond to the adverse party, in such penalty and with such surety or sureties as the judge of probate shall approve, conditioned for the diligent prosecution of such appeal and the payment of all such damages and costs as shall be awarded against him, in case he shall fail to obtain a reversal of the decision so appealed from. And in case any person appeals from the allowance and findings of the court upon the examination of his account as executor, administrator, guardian or trustee, the court may, in its discretion, fix the penalty of the bond in such sum as will cover the amount found due by the probate court upon examination of such account, in which case the bond and sureties thereon shall be liable to the amount of such bond for the amount found due by the probate court or the appellate court upon the final determination of such appeal, including the costs and damages awarded by such appellate court.

Liability.

Notice of
appeal, and
reasons.

SEC. 9. The appellant shall give notice of such appeal to the adverse party, with his reasons therefor, in such manner as the probate court shall direct, within fifteen days from the date of the order directing the manner of such service, unless the adverse party shall in writing, filed in the circuit court, waive such notice.

Appellant to
file certified
copy of record,
etc.

SEC. 10. The person appealing shall procure and file in the circuit court to which the appeal is taken, within thirty days after such appeal is taken, a certified copy of the record or proceedings appealed from, of the notice of and reasons for such appeal, and of the bond on appeal filed in the probate court and of the order of the probate court directing notice to the adverse party, together with evidence that notice has been given to the adverse party according to the order of the probate court. And in case the record herein required to be filed in the circuit court shall not be filed in such court within the time herein directed, such appeal shall cease to be of effect, and the order, decree, allowance or disallowance so appealed from shall stand as though such appeal had not been taken. And the certificate of the clerk of such circuit court of the filing or non-filing of such record in the circuit court may be filed in the probate court from which such appeal was taken, and when so filed shall be treated as evidence: *Provided*, That the circuit court to which the appeal is taken shall have power, upon application within the first ten days of the term of court next succeeding the expiration of the said thirty days for filing said certified copy, to reinstate said appeal, when the party making the appeal has

When appeal
to cease to be
of effect.

Proviso,
reinstatement
of appeal.

SEC. 11. When such certified copy shall have been filed in the circuit court, with the evidence of filing the requisite bond, and of giving notice as aforesaid, such court shall proceed to the trial and determination of the question according to the rules of law; and if there shall be any question of fact to be decided, issue may be joined thereon, under the direction of the court, and a trial thereof had by jury.

SEC. 12. If any person aggrieved by any act of the judge of probate, or by the determination of commissioners on claims, shall from any cause, without default on his part, have omitted to claim or prosecute his appeal according to law, the circuit court, if it shall appear that justice requires a revision of the case, may, on the petition of the party aggrieved, and upon such terms as it shall deem reasonable, allow an appeal to be taken and prosecuted with the same effect as if it had been done seasonably.

SEC. 13. No such appeal as provided in the preceding section shall be allowed without due notice to the party adversely interested, nor unless the petition therefor shall be filed within one year after the making of the decree or order complained of, and then such appeal shall not be allowed if the debts of said estate have been paid, or the estate distributed to the persons entitled thereto in due course of law.

SEC. 14. If the petitioner shall be without the United States at the time of passing the decree or order, or making the determination, he may file his petition within three months after his return, provided it be done within two years after the act complained of; but no such petition shall be allowed after the payment of the debts of the estate and the distribution thereof to the parties entitled thereto by due course of law.

SEC. 15. After an appeal is claimed and notice thereof given at the probate office, all further proceedings in pursuance of the sentence, order, decree, or denial appealed from shall cease until the appeal shall be determined: *Provided*, That when an appeal is taken from a decree admitting or denying probate of a will, the probate court may appoint one or more special administrators to take charge of and protect the estate, with such powers, not exceeding those of a general administrator, as the said probate court may deem necessary, and by order may confer in the particular case.

SEC. 16. The husband, wife or next of kin of any person under guardianship, may appeal from any order of the probate court or the circuit court in chancery, allowing the account of the guardian or guardians of such person under guardianship or any other order of such courts directing or sanctioning any action of such guardian affecting the estate of such person under guardianship, upon the same terms and conditions as are or may be provided by statute for appeals from other orders of such courts, such appellant being hereby

When husband, wife or next of kin may appeal.

authorized to prosecute such appeal in any court into which said proceedings may be removed the same as any other person appealing.

Surety on bond may support or oppose account of executor, etc.

SEC. 17. Any surety on the bond given by any executor, administrator, guardian or trustee and filed in any probate court of this State may appear in such court in support of or in opposition to the allowance of the account of such executor, administrator, guardian or trustee and may appeal from the final decree of such court thereon when aggrieved by such decree, and prosecute such appeal to effect.

When decree to be affirmed.

SEC. 18. If the appellant shall fail to prosecute his appeal with reasonable diligence, the circuit court, upon evidence that such appeal was taken, and on the motion of any person interested in the case, shall affirm the decree or act appealed from, and may allow costs against the appellant.

Powers of circuit court on appeal.

SEC. 19. The circuit court may reverse or affirm, in whole or in part the sentence or act appealed from, and may make such order or decree thereon as the judge of probate ought to have made, and may remit the case to the probate court for further proceedings, or may take any other order therein, as law and justice shall require.

Costs.

SEC. 20. In all cases that shall be contested, either in the probate court or in the circuit court, such court may award costs to either party, in its discretion, to be paid by the other, or to be paid out of the estate which is the subject of the controversy, as justice and equity shall require.

Execution for costs.

SEC. 21. When costs are awarded to one party to be paid by the other, the said courts, respectively, may issue execution therefor, in like manner as is practiced in the circuit courts in other cases.

CHAPTER LXVI.

Of the Jurisdiction, Powers and Duties of Justices of the Peace.

Jurisdiction in civil cases.

SECTION 1. Every justice of the peace elected in any township or city of this State and duly qualified, according to law, shall have original jurisdiction of all civil actions, including actions for the recovery of penalties and forfeitures wherein the debt or damages do not exceed the sum of one hundred dollars, and concurrent jurisdiction in all civil actions upon contract, express or implied, wherein the debt or damages do not exceed three hundred dollars, except as provided in section four of this chapter, and to hear, try and determine the same according to law: *Provided*, That no justice of the peace shall hold court or try any cause, civil or criminal, in any other township or city than that in which he was elected and qualified, except in cases where special provision is otherwise made by law.

Proviso, where not to hold court.

SEC. 2. Justices of the peace shall have jurisdiction in all cases of assumpsit, trespass on the case and replevin against school districts, when the amount claimed, or matter in controversy shall not exceed one hundred dollars; and the parties shall have the same right of appeal as in other cases.

Jurisdiction
against school
districts.

SEC. 3. Justices' courts are hereby vested with all such powers, for the purpose of exercising jurisdiction conferred by this chapter, as are usual in courts of record, except the power of setting aside a verdict and arresting judgment thereon.

General
powers.

SEC. 4. No justice of the peace shall have cognizance of real actions, actions for a disturbance of a right of way or other easement, actions for libel or slander, malicious prosecution or false imprisonment, and actions against executors or administrators as such, except in the cases specially provided by law, nor where the title to real estate shall come in question, except as hereinafter mentioned; nor actions against life insurance companies, cooperative and mutual benefit associations, fraternal beneficiary societies, for any liability arising out of any policy or benefit certificate contract; nor against municipal corporations, except in cases especially provided for by law: *Provided*, That justices of the peace may have jurisdiction in actions for damages resulting from obstructions to highways, subject to the restrictions prescribed in section one of this chapter.

When justice
shall not take
cognizance.

Proviso,
obstructions
to highways.

SEC. 5. All actions against corporations, except as otherwise provided, shall be cognizable before a justice of the peace in like manner and with the like restrictions as the same are or may be by law before a justice of the peace when brought against an individual.

Actions
against
corporations.

SEC. 6. Any action in favor of a county, which, if prosecuted by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such county in like manner before any such justice.

Actions in
favor of
county.

SEC. 7. Whenever any cause of action shall accrue to any person, by reason of a breach of the condition of any bond, where the amount of damages claimed does not exceed the jurisdiction of any justice's court in actions upon a contract, an action of assumpsit may be brought on such bond in such justice's court, and the recovery therefor shall not be a bar to a subsequent suit for further breaches of the condition of such bond.

Assumpsit
on bond.

SEC. 8. No justice shall take cognizance of any cause, or do any judicial act when he shall be related within the fourth degree of affinity or consanguinity to either party in any such matter, or shall have been of counsel, or shall be directly or indirectly interested in such cause or matter, or when he shall be related within the third degree of consanguinity to either of the attorneys, counselors or agents of either party to said cause, unless the parties interested in such cause, or their agents or attorneys, shall, with full

When justice
has no juris-
diction.

	knowledge of such disability, expressly consent that such justice may take cognizance of such cause or do such act.
No court to be held in bar room.	SEC. 9. No justice of the peace shall hold any court in any bar room, or any other place where any intoxicating liquors shall be sold.
Where actions to be brought.	SEC. 10. Every action commenced in such court shall be brought before some justice of the peace of the city or township where: <ol style="list-style-type: none"> 1. The plaintiffs or any of them reside; or 2. Where the defendants or any of them reside; or 3. Before some justice of another township or city, in the same county, next adjoining the residence of the plaintiff or defendant or one of the plaintiffs or defendants: <i>Provided, however,</i> That no justice of the peace of any of the townships in the county of Wayne shall have jurisdiction over any cause or proceeding, where both parties to the same or one or more of the plaintiffs and one or more of the defendants reside in the city of Detroit at the time of the commencement of the proceeding or cause, nor in case where the original cause of action existed in favor of a plaintiff and against a defendant, both residents of said city, and has been assigned to a non-resident of said city; or 4. Before some justice of a city in the same county, formed from a township or townships next adjoining the residence of the plaintiff or defendant, or one of the plaintiffs or defendants; or 5. Where the defendant is a foreign corporation, if service of process cannot be had in the county of the plaintiff's residence, suit may be brought before any justice of the peace of any county in which service of process may be had.
Provided, in Wayne county.	
Absconding defendant.	SEC. 11. But if a defendant shall have absconded from his residence, or shall have been continuously absent therefrom for the period of ninety days, such action may be brought before any justice of the township or city in which such defendant or his property may be; and if the plaintiffs be all non-residents of the county, or if the defendant be a non-resident of the county, then such action may be brought before any justice of the township or city where such plaintiffs or defendants, or either of them, may be.
Forms of action.	SEC. 12. The provisions of section one of chapter eleven of this act, relating to forms of actions, shall be applicable in justice's court, so far as such courts have jurisdiction of such actions.

CHAPTER LXVII.

Of Commencement of Suits and Service of Process in
Justices' Courts.

SECTION 1. Any justice of the peace may, either before or after the issuing of any process, in his discretion, require security of the plaintiff for any costs which may be adjudged against him in any action, and the person becoming such security shall sign an undertaking, in writing, to that effect, upon the docket of said justice, or he may sign a separate undertaking which shall be filed with the justice, and in all cases, except as provided in the following section, the court shall require plaintiffs who are not residents of the county in which the suit is brought, to give such security upon demand therefor by the defendant; and if any plaintiff, after commencing an action in the county in which he resides, shall remove from said county, the justice shall require such plaintiff to give security for all costs which have accrued and may accrue in the action, and if a judgment be rendered against the plaintiff in any case for costs, an execution may issue against said plaintiff and the person becoming security for said costs; and in case the defendant recover against said plaintiff any sum besides costs a separate execution may issue for the collection of the same.

Security
for costs.

SEC. 2. In any suit brought to recover for the personal work and labor of the plaintiff, security for costs shall not be ordered in case the plaintiff shall make and file with the court an affidavit that he has a good and meritorious cause of action and is unable to procure security for costs.

Suits for
personal work
and labor.

SEC. 3. Suits may be instituted before a justice, either by the voluntary appearance of the parties or by process; and when by process, it shall be either a summons, a warrant, an attachment, or writ of replevin; but no process shall contain the names of the defendants in more than one action.

Suits, how
instituted.

SEC. 4. All process issued by a justice of the peace shall be signed by him, and may be under seal or without seal. It shall not be necessary in any process to recite any of the contents or conditions of any bond or affidavit required to be made or filed before the issue of such process, but in any case the statement in such process, that such affidavit or bond has been made or filed, shall be sufficient.

Process to
be signed.Unnecessary
to recite bond.

SEC. 5. In all justices' courts in this State authorized by law to appoint or elect a clerk, the name of the justice of the peace presiding over such court may be written upon all summonses, garnishee summonses, and subpoenas in the following form:

Justice clerk
may sign
summonses,
etc.

John Doe, Justice of the Peace,

Form.

By

Clerk or Deputy Clerk.

The clerks or the deputy clerks of said courts are hereby au- Authority.

thorized to sign the name of the justice of the peace upon all such summonses, garnishee summonses and subpoenas, and all such summonses, garnishee summonses and subpoenas when so signed shall have full force and effect as if signed by the justice of the peace of such court.

Confession of judgment.

SEC. 6. If any debtor shall appear before a justice of the peace without process, and confess in writing, signed by him in the presence of the justice, that he is indebted to another upon contract in a certain specified sum, it shall be lawful for such justice, with the consent of the creditor, to enter judgment on such confession against the debtor for any sum not exceeding the jurisdiction of such justice.

When suit deemed commenced.

SEC. 7. Suits shall be considered as commenced at the times following:

1. Upon process by warrant, at the time of the arrest of the defendant;

2. Upon process by attachment, writ of replevin or summons, on the day when process shall be delivered to the constable; but if two or more suits be commenced by summons or attachment, on the same day, the suit in which the process was first served shall be deemed to have been first commenced;

3. When the suit is instituted without process, at the time when the parties shall appear before the justice and join issue.

Summons.

SEC. 8. The first process except as hereinafter directed, shall be a summons directed to any constable of the county in which the justice resides, commanding him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in such summons, not less than six nor more than twelve days from the date of the same, except as hereinafter provided, to answer the plaintiff in a plea in the same summons to be mentioned.

Service of summons.

SEC. 9. A summons shall in all cases, except as hereinafter otherwise provided, be served at least six days before the time of appearance mentioned therein, and if the defendant be found, it shall be served by delivering to him a copy thereof. But if the defendant shall not be found it shall be served by leaving a copy thereof at the defendant's last place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of its contents. Such summons may be served by any competent disinterested person to be designated on the writ by the justice issuing the same, and proof thereof by such person, by affidavit filed in the cause, shall have the same effect as if served by any constable.

Service by person designated by justice.

Justice may empower person to serve process.

SEC. 10. Every justice who shall issue any process authorized by this chapter, whenever he shall judge it expedient, on the request of a party, may, by written authority endorsed on such process, empower any proper person being of lawful age, and not a party or interested in the suit, to execute the same.

SEC. 11. The person so empowered shall possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, but shall not receive any fee or reward for his services thereon.

Authority
of person
empowered.

SEC. 12. If it appear by the return of the constable that the summons was not personally served, and the defendant shall not appear on the return day thereof, the plaintiff may thereupon take out a new summons against the defendant, in continuation of his suit, returnable not less than three nor more than twelve days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein; and if such summons be returned that the defendant cannot be found after diligent inquiry, the plaintiff may, in further continuance of his suit, have an attachment against the defendant, in actions upon contract, on filing an affidavit as to the amount claimed to be due, and executing a bond as in other cases.

New
summons.

Attachment.

SEC. 13. If the plaintiff shall be a non-resident of the county a summons may be made returnable not less than two nor more than six days from the date thereof, and shall be served at least two days before the time of appearance mentioned therein.

Returnable,
when
plaintiff is
non-resident.

SEC. 14. If the defendant shall be a non-resident of the county a summons shall be made returnable and be served as prescribed by the preceding section.

When
defendant
is non-
resident.

SEC. 15. When an action shall have been or shall be brought before any justice of the peace of this State against two or more joint defendants, one or more of whom shall not reside or be found in the county where the suit shall be brought, and one or more of the defendants shall be served with process in the county where suit is commenced, and due proof of such service shall be filed with the justice of the peace before whom such suit is pending, upon application of the plaintiff in such action, on the return day of the writ by which such action was commenced, the justice shall issue one or more alias writs of summons or other writ whereby such suit was commenced, returnable not less than six nor more than twelve days from the date of issue, directed to the sheriff or any constable of the county or counties where such defendant or defendants not so served may be found; and the justice shall endorse on such alias writ or writs what defendant or defendants have been served in the county where such suit is commenced, as shown by the proof of service filed with such justice; and it shall be the duty of such sheriff or constable to serve such process not less than six days from the return day thereof, and make return thereof to the justice of the peace issuing the same: *Provided*, That it shall be the duty of the justice of the peace, on the return day of the first writ, to continue the cause upon his own motion, and without pleadings, until the return day of the alias writ or writs.

When one of
several
defendants is
non-resident.

Alias writs
to issue.

Service
of process.

Proviso,
continuance
without
pleadings.

SEC. 16. In all actions on promissory notes or other instruments in writing, any of the parties to which are design-

Initial letters
or contraction
of christian
name.

nated by the initial letter or letters, or contraction of the christian or first name or names, it shall be sufficient in any affidavit to arrest or obtain an attachment, and in any process or declaration, to designate such persons by the same initial letter or letters, or contraction of the christian or first name or names, instead of stating the christian or first name or names in full.

Suits against partnership.

SEC. 17. In all cases where a suit is commenced for or against a copartnership, and the names of all the several partners are not known, such suit may be commenced in the partnership name of said plaintiffs or defendants; and the plaintiffs or defendants shall have the right at any time before the pleadings are closed to amend the same, by inserting the names of the parties composing such copartnership.

Amendment of pleadings.

When name of defendant unknown.

SEC. 18. When the name of any defendant shall not be known to the plaintiff, he may be described in the process and proceedings by a fictitious name, and if a motion to dismiss be interposed by such defendant, or his name be otherwise ascertained, the justice before whom the suit is pending, shall amend the proceedings according to the truth of the matter, and shall thereafter proceed therein, in like manner as if the defendant had been sued by his right name.

Service on corporation, partnership association and unincorporated association.

SEC. 19. Process against a corporation, partnership association, or unincorporated voluntary association may be served upon any officer, director or agent thereof, or by leaving same at the office of such corporation, partnership association, or unincorporated voluntary association, with any person in charge thereof, and upon the return of such service being made, such corporation shall be deemed to be in court and the like proceedings, as near as may be, shall be thereupon had as in cases of suits between individuals.

Sections applicable to justice's process.

SEC. 20. Sections twenty-nine, thirty, thirty-five, thirty-six and forty of chapter thirteen of this act, shall be applicable in like cases to the service of process issued out of any justice's court.

Return of process, how made.

SEC. 21. The constable serving a summons, warrant, attachment, or other process, shall return thereon, in writing, signed by him, the time and manner of executing the same; and, in case of a warrant, he shall in such return state the fact whether he has or has not notified the plaintiff.

Infant or insane plaintiff, etc.

SEC. 22. No process shall be issued for an infant plaintiff, nor for a plaintiff who is insane or otherwise mentally incompetent, nor shall any issue joined by such plaintiff without process be heard until a next friend of such plaintiff shall be appointed. In case such plaintiff has a guardian of his estate, it shall be competent for such guardian to bring such action.

Guardian.

Justice to appoint next friend.

SEC. 23. Whenever requested the justice shall appoint some suitable person who will consent thereto in writing, to act as next friend of the plaintiff in such suit, who shall be responsible for the costs therein.

SEC. 24. After the service of process against an infant defendant, or against a person who is insane or otherwise mentally incompetent, the suit shall not be any further prosecuted until a guardian for such defendant be appointed; and the justice, upon the request of such defendant, shall appoint some suitable person, who will consent thereto in writing, to be guardian of the defendant in the defense of the suit. In case such defendant has a guardian of his estate, it shall be competent for such guardian to defend such action.

Infant or
insane
defendant,
etc.

Guardian.

SEC. 25. If such defendant, or the guardian of his estate, shall not appear on the return day of the process, or if the defendant neglect or refuse to nominate a guardian, or if the person so nominated shall be deemed by the justice to be unsuitable, the justice may appoint any discreet person to be such guardian.

Non-appear-
ance of
defendant,
etc.

Guardian.

SEC. 26. The consent of every such next friend or guardian shall be filed with the justice; and the guardian so appointed for the defendant shall not be liable for any costs in the suit.

Consent of
next friend,
etc.

SEC. 27. Every plaintiff of full age may appear and conduct his suit or defense, either in person or by attorney; but the constable who served either the original or jury process in the cause, shall not appear and advocate for either party at the trial.

Appearance
in person.

Constable
not to be
advocate.

SEC. 28. The authority to appear as attorney for any party may be either written or verbal; and such authority shall be proved by the attorney or other competent testimony, in all cases where requested by the opposite party, or where the opposite party shall not appear.

Attorney's
authority.

CHAPTER LXVIII.

Of Adjournments and the Transfer of Causes.

Of Adjournments.

SECTION 1. At the time of the return of a summons against a resident of the county, in favor of one who is also a resident, or an attachment personally served, or of a writ of replevin, or of joining issue without process, either party shall be entitled to an adjournment as a matter of course, but such adjournment shall not exceed two weeks without the consent of the parties, or the justice may, in his discretion, and with or without the consent of the parties, adjourn the cause not exceeding six days.

Adjournment
as of course.

Length of ad-
journment.

SEC. 2. After the first adjournment, if either party to the suit shall make it appear to the satisfaction of the justice, by his own oath, or the oath of any other person, that he cannot safely proceed to trial for the want of some material testimony or witness, and that he has used reasonable diligence to procure such testimony or witness since the last preceding adjournment, the justice shall postpone the trial for such reasonable time, and so often as he shall deem it proper, not ex-

Subsequent
adjourn-
ments, how
obtained.

ceeding in all three months, unless by consent of the parties to such suit, a longer time shall be stipulated therefor in writing, to be signed by the parties or their attorneys and filed with the justice.

Observers of the Seventh Day.

Observers of seventh day.

SEC. 3. No person who conscientiously believes the seventh day of the week ought to be observed as the sabbath, and actually refrains from secular business and labor on that day, shall be compelled to defend any civil suit in the justices' courts of this State on that day.

Proceedings when process returnable on seventh day.

SEC. 4. Whenever any person, as aforesaid, shall be served with any process returnable on the seventh day of the week, such person may make affidavit before any person authorized to administer oaths, setting forth the fact that a summons has been issued, naming the day when the same was issued, when returnable, by whom issued, and in whose favor, and against whom the same was issued; and also that said affiant conscientiously believes that the seventh day of the week ought to be observed as the sabbath and that the said affiant actually refrains from secular business and labor on said day, and may at any time after service of such process, and before the return day thereof, file such affidavit with the justice before whom said cause shall be pending.

Justice to adjourn suit.

SEC. 5. It shall be the duty of any justice of the peace before whom any cause shall be pending, in which such affidavit shall be filed regularly, to call such cause on the return day thereof, as in other cases, and upon his own motion to adjourn the same without pleadings, to such time as he shall see fit: *Provided*, The same shall not be adjourned to the seventh or the first day of the week: And *Provided also*, That the said cause shall not be so adjourned more than ten days, for the cause aforesaid.

Proviso, not on seventh day.
Proviso, not more than ten days.

Sickness or absence of justice.

SEC. 6. In case of the sickness of any justice, or of his absence from the township or city in which he was elected, or his inability from any cause, temporarily or negligently, to perform the duties of his office, any such matter or cause pending before him shall stand continued before him two weeks, at the end of which time, unless said justice shall be able to attend the same, such cause or matter shall stand transferred to the justice of the same township or city, whose term of office shall soonest expire, and be heard or tried before him in the same manner and time as in case of a vacancy: *Provided*, That this section shall not be construed to prevent the transfer of causes by justices under the existing provisions of law.

Transfer of case.

Proviso, transfer of causes by law.

Of the Transfer of Causes.

When justice may deliver papers, etc., to other justice.

SEC. 7. If any justice of the peace shall be absent when there shall be pending before him any matter or suit undetermined, he may deliver over all the papers relating to such

matter or suit, with a minute of his proceedings therein, to some neighboring justice of the same city or township, who may thereupon proceed to hear, try and determine such matter or suit, in the same manner as if such matter or suit had been commenced before him, and with like effect; but the parties to such matter or suit, their agents or attorneys, shall be notified of such transfer previous to any hearing or trial of such matter or suit.

Notice
to parties.

SEC. 8. If, before joining issue in any cause, the defendant, or his agent or attorney, shall make and file with the said justice an affidavit, stating that the justice, before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to the trial thereof, and shall state in said affidavit the facts he expects to prove by said justice, or shall make and file as aforesaid an affidavit that the said justice has advised or counseled with the plaintiff in respect to the subject matter of said cause, the justice shall forthwith make in his docket an entry of the filing of such affidavit, and an order that the suit and all papers relating thereto, be transferred to one of the nearest justices of the peace in the same county who is not of kin to either party, sick, absent, or interested in the event of said suit, either as counsel or otherwise, which justice shall be named in said order and such transfer shall forthwith be made by such justice, and the justice to whom such transfer shall be made, shall thereupon proceed to hear, try and determine the cause in the same manner as if the suit had been originally commenced before him, and with like effect, or the said justice may in the order aforesaid, in his discretion, postpone the hearing of said cause to such time as he shall see fit, not exceeding five days, at which time the justice to whom the cause is transferred, shall attend and proceed to hear, try and determine said cause as aforesaid: *Provided*, That the defendant shall pay to the justice making such order of transfer, the costs which have so far accrued and as taxed by said justice, together with fifty cents for such transcript, and the sums so paid shall be recovered by the said defendant against the plaintiff in addition to his other costs, if he finally prevail in said cause.

How suit may
be transferred.

Causes.

Transfer.

Proceedings
after transfer.

Proviso, costs
to be paid.

SEC. 9. In case a vacancy from any cause shall occur in the office of a justice of the peace, all causes and matters pending before him at the time such vacancy shall occur shall stand transferred to the justice of the same township or city whose term of office shall soonest expire: *Provided*, That the hearing or trial of the same shall not be had within ten days after such vacancy shall occur.

Transfer
in case of
vacancy.

Proviso,
hearing not
within
ten days.

CHAPTER LXIX.

Of Pleadings.

When
pleadings
made and
issue joined.

SECTION 1. At the time of the first appearance of the parties before the justice, either upon the return of process or their voluntary appearance to join issue, the pleadings of the parties shall be made, unless the justice shall allow further time upon cause shown, and when both parties have appeared, an issue shall be joined before an adjournment shall be had, except as aforesaid; and when the defendant shall have appeared upon a warrant the pleadings shall be made within such reasonable time as the justice shall allow for that purpose.

Pleadings may
be written
or verbal.

SEC. 2. The pleadings in a suit before a justice of the peace may be either written or verbal, at the discretion of the party making the same, except in case of notice of title to land; when written, they shall be filed with the justice; when verbal, the justice shall enter in his docket the substance thereof; the declaration shall be sufficient if conformable at the time, to the rules of pleading applicable to the circuit court; the plea of the general issue shall be in the same form as in that court, and notice of any defense not admissible under the general issue, shall be given with such plea; no demurrer or plea in abatement shall be allowed, but all questions heretofore raised by demurrer or plea in abatement shall be raised by a motion to dismiss; and the execution of a written instrument filed with the justice, shall not be denied, except under oath as hereinafter provided.

Sufficiency.

General issue
and notice.

Motions
to dismiss.

Denial of
execution of
written in-
strument.

Actions on
accounts.

SEC. 3. Plaintiffs, in actions founded on open accounts, shall embrace all claims then due on account, or failing so to do, shall not recover costs in any subsequent suit on claims not so embraced.

Failure or
want of con-
sideration.

SEC. 4. A failure or want of consideration in whole or in part, may be shown in defense, to any action or set-off, upon or arising out of any bond or promissory note or other instrument in writing, except negotiable notes, negotiated before falling due; to any person not having at the time it was negotiated, knowledge of such defense.

Judgment
of court of
special juris-
diction.

SEC. 5. In pleading a judgment or decision of a court or officer of special jurisdiction, it shall be sufficient to allege generally, that judgment or decision was duly given or made.

Condition
precedent.

SEC. 6. In pleading the performance of a condition precedent in a contract, it shall be sufficient to allege generally that the party performed all the conditions on his part; if the allegation be denied, the facts showing the performance must be proved on the trial.

Joinder
of counts.

SEC. 7. Two or more counts, where proper to be joined, may be joined in a declaration even though the aggregate amount of damages claimed on all the counts exceeds the jurisdiction of the justice's court, if there is a general conclusion to the declaration limiting the total amount for which recovery

is claimed to an amount within the jurisdiction of said court.

SEC. 8. In cases before a justice, where a bill of particulars of the demand of the party may be required in a court of record, the plaintiff may be required by the justice to file such bill of particulars of his demand; and the defendant, if required by the plaintiff, shall file a like bill of particulars of his claim as a set-off; and the evidence on the trial shall be confined to the items set forth in said bill. Bill of particulars.

SEC. 9. Such bill may be amended at any time before the trial, to supply any deficiency or omission in the items, when by such amendment, substantial justice will be promoted. Amendment of bill.

SEC. 10. The justice may, in his discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required, unless an adjournment is made necessary by the amendment. Condition of amendment.

Of Set-off and Recoupment.

SEC. 11. In the following cases, and under the following circumstances, a defendant may set off demands which he has against the plaintiff: When set-off allowed.

1. It must be a demand arising upon judgment or decree, or upon contract, express or implied whether such demand be liquidated or not and whether such contract be written or unwritten, sealed or without seal and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of its condition only, shall be set-off; On what demands.

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee or owner of the bond; Own right.

3. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant; Commencement of suit.

4. It can be allowed only in actions founded on demands which could themselves be the subject of set-off according to law; Demands subject to set-off.

5. If there be several defendants, the demand set-off must be due to all of them jointly, except where other provision is expressly made by law; Several defendants.

6. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff who has no real interest in the contract upon which the suit is founded; in which case, no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified; Demand against plaintiff.

7. If the action be founded upon contract (other than a negotiable promissory note or bill of exchange) which has been assigned by the plaintiff, a demand existing against such plaintiff, or any assignee of such contract, at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set-off to the amount of the plaintiff's debt, if the demand be such as might have been set-off against such plaintiff or such assignee while the contract belonged to him; Action upon contract.

Negotiable promissory note, etc.

8. If the action be upon a negotiable promissory note or bill of exchange which has been assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set-off against the assignor while the note or bill belonged to him;

Plaintiff trustee for another.

9. If the plaintiff be a trustee for another, or if the suit be in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set-off as will satisfy the plaintiff's debt, if the same might have been set-off in an action brought by those beneficially interested;

Principal and sureties.

10. In actions upon a note or other contract against several defendants, any one of whom is principal, and the others sureties therein, any claim upon contract in favor of the principal defendant, and against the plaintiff, or any former holder of the note or other contract, may be allowed as a set-off by the principal or any other defendant.

Notice of set-off or recoupment.

SEC. 12. To entitle a defendant to damages by way of set-off or recoupment, he must give notice of the same, specifying the nature of his claim, with reasonable certainty at the time of joining issue on a question of fact upon the merits of the cause.

Judgment in cases of set-off or recoupment.

SEC. 13. If the amount of damages by way of set-off or recoupment duly established, be equal to the plaintiff's debt, judgment shall be entered for the defendant with costs; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only, with costs; if it be more than the plaintiff's debt, and the balance found due to the defendant from the plaintiff in the action be three hundred dollars or under, judgment shall be rendered for the defendant for the amount thereof, with costs; and execution shall be awarded as upon a judgment in a suit brought by him; but no such judgment shall be rendered against the plaintiff when the contract which is the subject of suit, shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

Balance exceeding \$300.

SEC. 14. If the balance found due to the defendant exceeds three hundred dollars, the justice shall apply so much of the defendant's demand against the plaintiff's debt as shall be sufficient to satisfy it, and shall render judgment for the defendant for the sum of three hundred dollars and his costs, unless the defendant shall withdraw his claim of set-off or recoupment before judgment is rendered; but if the defendant shall withdraw his claim of set-off or recoupment, the justice shall render judgment in favor of the plaintiff for the amount of his claim with costs, and the defendant may thereafter sue for and recover his demand in any court having cognizance thereof.

SEC. 15. Whenever a claim of set-off or recoupment is established in a suit brought by executors or administrators, and the defendant shall be entitled to judgment, such judgment shall be rendered against the plaintiffs in their representative character, and shall be evidence of debt established to be paid in the course of administration, but no execution shall issue thereon.

Set-off, etc.,
by executors,
etc.

SEC. 16. If defendant neglect to set-off or recoup any demand which, according to the preceding provisions might have been allowed to him on the trial of the cause, he shall be forever thereafter precluded from recovering costs in any action brought to recover such demand, or any part thereof, which might have been set-off or recouped; and if the demand which might have been set-off consisted of a negotiable promissory note or bill of exchange, no person who shall derive title thereto, after the amount thereof might have been set-off or recouped as aforesaid, shall recover costs in any action thereon.

Defendant
neglecting to
set off, etc.,
precluded
from recover-
ing costs.

SEC. 17. In any action when the defendant has given notice of set-off or recoupment, the plaintiff shall not be allowed to discontinue his suit, or submit to a non-suit, without the consent of the defendant.

Plaintiff not
to discon-
tinue, etc.

Of Cases Where the Title to Lands is in Question.

SEC. 18. In every action where the title to land shall in any wise come in question, the defendant may give notice thereof under the general issue, upon the return day, or any adjourned day of such action, and he may also give notice as in other cases, of any other matter of defense.

Notice that
title will
come in
question.

SEC. 19. Such plea and notice shall be in writing, and signed by the defendant or his attorney, and delivered to the justice.

Notice to be
in writing.

SEC. 20. At the time of tendering such plea and notice, the defendant, with at least one sufficient surety to be approved by the justice, shall enter into a bond to the plaintiff, in a penalty of at least two hundred dollars, conditioned that such defendant will pay any judgment that may be rendered against him in such action in the circuit court of such county, and shall also pay the plaintiff's costs legally incurred at that time, not exceeding the amount allowed by law in justices' courts, and also the sum of one dollar to the justice for certifying the cause to the circuit court, together with the sum of three dollars, which last sum shall be paid to the clerk of the county by said justice at the time such justice shall certify the cause to the circuit court.

Bond of
defendant.

SEC. 21. Such bond shall be delivered and such fees and costs shall be paid to the justice at the time of tendering such plea and notice and the justice shall thereupon, without further proceedings certify the cause and papers to the circuit court of the county where the same may be tried, and the costs so paid by the defendant shall be allowed to him if he recover costs in the action in that court.

When justice
to certify
cause to cir-
cuit court.

When justice
to proceed
with case.

SEC. 22. If such bond be not delivered and such fees and costs paid as herein directed, the justice shall have jurisdiction of the cause, and shall proceed therein, and the defendant shall be precluded in his defense from all evidence drawing in question the title to lands; and any claim of title to lands made by the plaintiff in his declaration, and therein described, shall be deemed to be admitted by the defendant.

When justice
to certify case
to circuit
court.

SEC. 23. If it appear on the trial from the plaintiffs' own showing that the title to lands is in question, which title shall not be admitted by the defendant, the justice shall, without further proceeding, certify the cause and papers to the circuit court of the county where the same shall be tried; and the party in whose favor judgment shall be rendered in the circuit court, shall recover costs, which shall include his costs before the justice.

Costs.

When suit
removed,
pleadings
to be same.

SEC. 24. When a suit is removed from a justice's court as hereinbefore provided, the plaintiff in such suit shall be permitted to declare or to give evidence only for the same cause of action whereon he relied before the justice, and the plea and notice of the defendant shall be the same which he tendered before the justice.

Where title
did not come
in question.

SEC. 25. If the presiding judge of the court before which the suit was tried, shall certify that the title to lands did not come in question, if the plaintiff recover he shall recover double costs; if the defendant recover (other than judgment of non-suit), he shall not recover costs, but shall pay costs to the plaintiff.

Costs.

When
declaration
contains some
counts in
which title
comes in
question.

SEC. 26. If the plaintiff's declaration in the suit before a justice shall contain several counts or causes of action, to one or more of which a defense, bringing in question the title of lands, shall be interposed by the defendant, the justice shall discontinue proceedings for such cause of action; and for the other causes of action the justice may continue his proceedings.

CHAPTER LXX.

Of Trials and Proceedings Incident Thereto.

Of Compelling the Attendance of Witnesses.

Justice
may issue
subpoenas.

SECTION 1. Any justice of the peace may issue subpoenas to compel the attendance of witnesses, to give evidence in any cause or matter pending before himself or any other justice or court; and such subpoenas shall be valid to compel the attendance of a witness within the same county where the cause or matter is to be tried, or in another county, and within thirty miles of the place of trial.

How served.

SEC. 2. A subpoena may be served either by a constable or any other person, and it shall be served by reading the same, or stating the contents to the witness, and by paying

or tendering the fees allowed by law for traveling, and one-half day's attendance.

SEC. 3. Whenever it shall appear by the affidavit of the party in the suit, or by other competent testimony, to the satisfaction of the justice, that any person duly subpoenaed to appear before him in any cause shall have refused or neglected without just cause to attend as a witness in conformity to such subpoena, and that the testimony of such witness is material, as the deponent verily believes, the justice shall have power to issue an attachment to compel the attendance of such witness.

When attachment may issue.

SEC. 4. Every such attachment shall be issued in the same manner as a warrant, and the fees of the officers for issuing and serving the same, shall be paid by the person against whom the same shall have been issued, unless he shall show reasonable cause to the satisfaction of the justice for his omission to attend; in which case the party requiring such attachment shall pay all costs of such attachment and the service of the same.

Fees for serving attachment, how paid.

SEC. 5. Every person duly subpoenaed as a witness, who shall not appear, or who appearing shall refuse to testify, shall forfeit for every such non-appearance or refusal (unless some reasonable cause or excuse shall be shown on his oath, or the oath of some other person), a sum not less than one dollar, nor more than ten dollars.

Penalty for neglect to appear or to testify.

SEC. 6. Such fine may be imposed by the justice, upon the witness being before him, or his being brought before him on attachment; and the justice shall thereupon make and enter in his docket a minute of the conviction and the cause thereof, and the same shall be deemed a judgment, in all respects, at the suit of the people of this State.

Fine and collection.

Entry in docket.

SEC. 7. Upon the imposition of such fine, and in default of payment thereof, with costs, the justice shall forthwith issue an execution directed to any constable of the county, commanding him to levy such fine, with costs, on the goods and chattels of the delinquent, and for want thereof to take and convey him to the jail of the county, there to remain until he shall pay such fine and costs; and the keeper of such jail shall keep such delinquent in close custody in such jail, until the fine and costs be paid, but such imprisonment shall not exceed thirty days.

Execution for fine.

Imprisonment.

SEC. 8. When money shall be collected on such execution, the constable shall return the same to the justice, and such justice shall pay over the amount of such fine to the county treasurer, to be distributed according to law.

Disposition of moneys collected.

SEC. 9. Every person subpoenaed as aforesaid, and neglecting or refusing to appear or testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such non-appearance or refusal, and in all cases when any fees shall be paid to any person for attendance or travel as

Liability for damages.

Refund of fees.

a witness, and such person shall fail to attend, he shall refund the amount paid.

Of the Trial of Issues of Fact, and the Incidents Thereto.

Justice to
try issue.

SEC. 10. In any cause before a justice, if no jury be demanded by either party, the justice shall proceed to try the same, to hear the proofs and allegations of the parties, and to determine the same according to law, as the right of the case may appear.

When
defendant
fails to
appear.

SEC. 11. Whenever a defendant who has been personally served with a summons, attachment or writ of replevin, or who shall have procured an adjournment without having joined issue, shall neglect to appear and join issue, the justice shall proceed to hear the proofs and allegations of the plaintiff, and determine the same as above prescribed.

Demand
for jury.

SEC. 12. After an issue of fact joined, and before the justice shall proceed to an investigation of the merits of the cause, by an examination of a witness, or the hearing of any other testimony, either of the parties, or the attorney of either of them, may demand of the justice that the cause be tried by a jury, and pay to the justice the lawful fees of the jurors.

List of
eighteen
names to
be made.

SEC. 13. Upon such demand and payment of such fees to the justice, such justice shall direct some disinterested constable, or other proper person of the county, to write down a list of the names of eighteen inhabitants of the county qualified to serve as jurors in courts of record, who shall be in no wise of kin to the plaintiff or defendant nor interested in such suit.

Person
making list
to be sworn.

SEC. 14. The constable or other person directed to make such list, shall, before making the same, be sworn by the justice to select such persons according to his best judgment, and without favor or partiality to either party.

Each party
to strike off
six names.

SEC. 15. From such list each party may strike off six names; and in case of the absence or refusal of either party to strike out, the justice shall strike out for him six names from said list; and the justice shall thereupon issue a venire, directed to any constable of the county, requiring him to summon the six persons whose names shall remain upon the list, to appear at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such venire; and the constable shall serve such venire personally on each juror named therein, if to be found within his county.

Venire.

Parties may
agree upon
jury.

SEC. 16. The parties may agree upon six or any less number of jurors to try the cause; and in such case the justice shall direct in the venire the summoning of the persons so agreed upon, who, when summoned and appearing, shall compose the jury; and the justice shall make a minute of such agreement in his docket.

When
talesmen to be
summoned.

SEC. 17. If any of the jurors named in the venire shall not be found, or shall fail to appear according to the summons, or if there shall be any legal objections to any one

who shall appear, it shall be the duty of the constable, on being thereunto directed by the justice, to summon a sufficient number of talesmen to supply the deficiency.

SEC. 18. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, or appearing shall refuse to serve, shall be subject to the same fine, to be imposed and collected with costs, in the same manner, and paid over for the same use, as hereinbefore provided in respect to a person subpoenaed as a witness, and not appearing, or appearing and refusing to testify.

Penalty for failure to appear or to serve as juror.

SEC. 19. In all civil cases before justices of the peace, each party may challenge peremptorily two jurors, either from those named in the original venire or from those called as talesmen.

Peremptory challenges.

SEC. 20. It shall be a good cause of challenge to any juror in any justice court in any city, township or village in this State, in addition to the other causes of challenge allowed by law, that such person has served as a juror in any justice court in any such city, township or village in this State two times within one year previous to such challenge.

Cause of challenge.

SEC. 21. To each juror the justice shall administer an oath or affirmation, well and truly to try the matter in difference between, plaintiff, and, defendant, and unless discharged by the justice, a true verdict to give, according to law and evidence.

Oath to jurors.

SEC. 22. After the jury shall be duly sworn, they shall sit together and hear the proofs and allegations of the parties, which shall be delivered publicly in their presence.

Jury to hear proofs.

SEC. 23. Every person offered as a witness, before any testimony be given by him, shall be duly sworn or affirmed, that the evidence he shall give relating to the matter in difference between, plaintiff, and, defendant, shall be the truth, the whole truth, and nothing but the truth.

Oath of witness.

SEC. 24. If a witness, on being produced, shall be objected to as incompetent, such objection shall be tried and determined by the justice; and evidence may be given in support of or against such objection, as in other cases, and the proposed witness may be examined on oath by the party objecting.

Objections to competency of witnesses, how tried.

SEC. 25. Any party causing witnesses to be subpoenaed, and not swearing and examining them, if in attendance, shall pay the costs occasioned thereby, unless the use of such witnesses be dispensed with by the admission of the opposite party; any party calling more than two witnesses to a fact not contradicted by any other witness, shall pay the costs occasioned by such supernumerary witness.

Unnecessary witnesses, how paid.

SEC. 26. When any written instrument, purporting to be executed by one of the parties, is declared upon or set off, it may be used in evidence on the trial of the cause against such party, without proving its execution, unless its execution

Execution of written instrument need not be proved, unless denied on oath.

be denied by oath at the time of declaring, or pleading, or giving notice of set-off, if such instrument shall be produced and filed with the justice.

Failure or want of consideration, when admitted in evidence.

SEC. 27. A failure or want of consideration, in whole or in part, may be given in evidence, in any action or set-off upon, or arising out of any contract, except negotiable instruments, negotiated before they became due, to persons not having notice of such defense; in actions upon such contracts, evidence of a partial failure, or want of consideration, shall not be admitted, unless notice of such defense shall be given.

Discontinuance as to part of defendants.

SEC. 28. When an action is brought against two or more defendants, the plaintiff shall, at any time before the final submission of the case, be allowed to discontinue as against any of the defendants upon payment of costs to them, as in case of non-suit and upon such other terms as the justice, before whom the case is pending, shall direct. And the plaintiff may thereupon amend his declaration and proceed against the other defendant or defendants in like manner as if the action had originally been brought against them alone. But in case an action is brought against two or more defendants, the plaintiff shall not be required to discontinue as to any of them, but the jury shall show by their verdict, or the justice by his finding, in a trial by the justice without a jury, which of them are and which are not liable to the plaintiff, and judgment shall be given accordingly.

Jury to be kept until they agree.

SEC. 29. After hearing the proofs and allegations, the jury shall be kept together in some convenient place, under the charge of a constable, until they shall agree upon their verdict, and for that purpose the justice shall administer to such constable the following oath: "You do swear, (or affirm, as the case may be), that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial, in some private and convenient place, without meat or drink, except such as shall be ordered by me; that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by my order, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations, or the verdict they have agreed upon."

Oath of officer.

Verdict to be delivered publicly.

SEC. 30. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, and thereupon the justice shall enter the same in his docket, and render judgment thereon.

When jury may be discharged.

SEC. 31. Whenever a justice shall be satisfied that a jury sworn in any cause before him cannot agree on their verdict, after having been out a reasonable time, he may discharge them; and thereupon a new jury shall be selected and summoned as hereinbefore directed, within forty-eight hours, unless the parties agree upon a longer time, or consent that the

New jury.

justice may render judgment on the evidence already before him, which, in such case, he may do.

CHAPTER LXXI.

Of Judgments and Transcripts Thereof.

SECTION 1. Judgment of non-suit with costs, shall be rendered against the plaintiff prosecuting an action before a justice of the peace in the following cases: Judgment of non-suit.

1. If he discontinue or withdraw his action;
2. If he fail to appear on the return of any process, within one hour after the same was returnable;
3. If, after an adjournment, he fail to appear within one hour after the time to which the adjournment shall have been made;
4. If he become non-suited on the trial.

SEC. 2. Judgment for the defendant, with costs, shall be rendered, whenever a trial has been had and it be found by verdict, or by the decision of the justice, that the plaintiff has no cause of action against the defendant. Judgment for defendant.

SEC. 3. Whenever a judgment shall be rendered by any justice of the peace against any party, unless otherwise herein provided, it shall be with costs of suit; but the whole amount of all the items of the costs taxed in favor of the prevailing party, exclusive of jury fees and fees of the officer for summoning and attending the jury, and exclusive of the attorney fee provided for in the next section, shall not exceed ten dollars. Costs.

SEC. 4. In all cases when a contested trial takes place, in addition to all other costs allowed by law, if the prevailing party was represented by a regularly licensed attorney and counselor, such party shall be entitled to tax the sum of five dollars as an attorney fee: *Provided*, That in no case shall the plaintiff tax a greater attorney fee than the amount of judgment recovered, exclusive of costs. Attorney fee. Provision, limit of fee.

SEC. 5. No costs shall be recovered by the plaintiff in actions upon judgments rendered in this State, unless good cause shall be shown therefor upon oath. Costs upon judgments in state.

SEC. 6. If process shall have issued against two or more persons, jointly indebted, and shall have been personally served upon either of the defendants, the defendant who may have been served with process, shall answer to the plaintiff, and the judgment in such case, if rendered in favor of the plaintiff, shall be against all the defendants, in the same manner as if all had been served with process; but execution shall issue only in the manner hereinafter directed. Process against two or more and service on either.

SEC. 7. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein; but against every other defendant, it shall be evidence only of the extent Effect of judgment in such cases.

of the plaintiff's demand, after the liability of such defendant shall have been established by other evidence.

When justice
to render
judgment
forthwith.

SEC. 8. In cases where a plaintiff shall be non-suited, discontinued or withdraw his action, and where a judgment shall be confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment and enter the same in his docket; in all other cases he shall render judgment and enter the same in his docket, within four days after the cause shall have been submitted to him for his final decision.

Judgment
within
four days.

When party
may remit
excess and
take judgment
for balance.

SEC. 9. When a balance shall be found in favor of a party, either by the verdict of a jury or upon a hearing before the justice, exceeding the sum for which the justice is authorized to give judgment, such party may remit and release the excess, and may take judgment for the residue.

Transcript of
judgment.

SEC. 10. Whenever an execution may by law be issued upon any judgment rendered by a justice of the peace, for twenty dollars or over, exclusive of costs, the party in whose favor such judgment shall have been rendered, his executor, administrator or assignee or the attorney of either of the parties may make and deliver to the justice of the peace having the control of such judgment, an affidavit, setting forth in substance, that the deponent knows, or has good reason to believe, and does believe, that there are not sufficient goods and chattels liable to execution to satisfy such judgment, within the county in which such judgment was rendered, belonging to such person or persons against whom such execution may issue; and thereupon it shall be the duty of the justice of the peace having the control of such judgment, rendered by himself or any other justice, on the demand of any person in whose favor the same shall have been rendered, his assignee or the attorney of either of the parties to give a certified transcript of such judgment and of the proceedings in the case, so far as they appear upon the docket, and the original affidavit required by the provisions of this section.

Clerk of
circuit court
to file trans-
cript, etc.

SEC. 11. If the plaintiff, his assignee, or the agent or attorney of either of the parties shall make an affidavit stating the amount due upon such judgment, it shall be the duty of the clerk of the circuit court for the county in which such judgment shall have been rendered, to file such transcript in his office when requested, and to enter and docket the judgment in a book to be kept by him for that purpose, noting therein the time of receiving it and the amount sworn to be due.

Effect of
judgment.

SEC. 12. Such judgment shall have the same effect as a judgment rendered in the circuit court, and may in the same manner be enforced, discharged and canceled; and execution may be issued thereon against both the surety and the person against whom the judgment was rendered, or either of them, in the same manner as if execution were to be issued by the justice.

SEC. 13. Whenever an execution may by law be issued upon any judgment rendered by a justice of the peace, the party in whose favor such judgment shall have been rendered, his agent, attorney or assignee, may make and deliver to the justice of the peace having control of such judgment, an affidavit stating the amount due on said judgment, including a transcript fee of two dollars, which must be paid to the justice before any transcript shall issue, and setting forth in substance that the deponent knows or has good reason to believe and does believe that there is not sufficient goods and chattels liable to execution within the county in which said judgment was rendered, belonging to any person or persons against whom such execution may issue.

Transcript from justice of one county to justice of another county.

SEC. 14. Thereupon it shall be the duty of said justice to make a certified transcript of such judgment and the proceedings in the case so far as they shall appear on his docket, with a statement of the amount sworn to be due thereon, and send the same with a fee of one dollar, by mail, postage prepaid, to any justice of the peace within this State to whom he shall be requested to send the same by the party procuring it: *Provided*, That no transcript shall issue upon such judgment, when there was no personal service.

Justice to make transcript.

Proviso, personal service.

SEC. 15. It shall be the duty of the justice of the peace to whom such transcript shall be sent, on receipt of the same to enter said judgment in full upon his docket, noting thereon the time of receiving it, and the amount sworn to be due thereon.

Justice to enter transcript.

SEC. 16. Such judgment shall have the same force and effect as if it had been rendered by the justice so receiving it in the first instance, and may in the same manner be enforced, discharged, and canceled, and execution may issue for the amount due as upon any other like judgment on said docket.

Effect of judgment.

CHAPTER LXXII.

Of Executions.

SECTION 1. Upon any judgment being rendered before a justice of the peace, he shall issue execution thereon, if requested, at the time and in the manner hereinafter prescribed, which shall be dated on the day when it actually issued, and be made returnable in sixty days thereafter.

Issue and return.

SEC. 2. Such execution shall be directed to any constable of the same county, and shall command him in the name of the people of the State of Michigan, to levy the debt or damages, with interest and costs, of the goods and chattels of the person or persons against whom the same shall be issued (excepting such goods and chattels as are by law exempted from execution), and bring the money before such justice, at the time and place therein to be mentioned, to render to the party who recovered the same.

To whom directed.

Command.

When execution to command constable to take body.

SEC. 3. In all cases where, by the provisions of this chapter, an execution may issue against the body of any person, it shall, if the judgment creditor require it, contain a further command to the constable, that if no such goods or chattels can be found, or not sufficient to satisfy such execution, he shall take the body of the person against whom the same shall be issued, and convey him to the common jail of the county, there to remain until such execution shall be paid and satisfied, or he be discharged by due course of law.

Death of defendant after levy and before sale.

SEC. 4. When the defendant in an execution shall die after levy and before sale, the property levied on shall be sold in the same manner as if he were alive; but if no levy has been made in such case, such execution shall be returned without further proceedings; but if an execution shall have issued against several defendants, and some of them die thereafter, the execution may be executed upon the property of the surviving defendants or any of them if he shall have been personally served with process or shall have appeared in the action.

Death of plaintiff after execution.

SEC. 5. If the plaintiff die after the execution has issued, the same shall be executed and returned as if the plaintiff were living.

When cases may issue against body.

SEC. 6. An execution issued by a justice of the peace may authorize the arrest and imprisonment of the person against whom the judgment is rendered, in the following cases:

1. When the action in which such judgment was rendered shall have been commenced by warrant;

2. When the judgment was rendered in an action of replevin, or action on the case for tort;

3. In case of fraud or breach of trust, when the debt arises on contract, or is founded on a contract, express or implied;

4. In actions for money collected by public officers, or in any professional employment;

5. When the plaintiff, or some one in his behalf, shall, at or after the time of rendering the judgment, make and file with the justice an affidavit, setting forth the facts and circumstances which would have entitled him to a warrant against the defendant, according to the provisions of this act, or such facts and circumstances shall appear from the proceedings, or the evidence on the trial of the cause.

When execution to issue forthwith.

SEC. 7. In the cases mentioned in the preceding section, and also in suits commenced by attachment, or in suits to recover for the personal work and labor of the defendant, or any member of his family, execution shall, on application of the person in whose favor the judgment was rendered, his agent or attorney, be issued forthwith after the rendition of the judgment.

Executions to issue after five days.

SEC. 8. Upon all judgments rendered by justices of the peace, except in the cases mentioned in the two last preceding sections, executions shall issue at the expiration of five days from the rendering of the judgment; and such exe

cution shall not issue sooner without the consent in writing, of the person against whom the judgment was obtained, or the proof in the next section specified.

SEC. 9. If the party obtaining such judgment shall make it appear by his own oath, or other competent testimony, to the satisfaction of the justice, that such party will be in danger of losing the amount recovered by him, unless execution issue sooner than is prescribed in the last preceding section, such justice shall issue execution immediately. Immediate execution on cause shown.

SEC. 10. Application for such execution may be made at the time of rendering the judgment; or, if a reasonable notice be given to the adverse party of the intention to apply for such execution, such application may be made at any time after the judgment shall have been rendered. Application, when made.

SEC. 11. When a judgment shall be obtained against joint debtors upon process which was not personally served upon all the defendants, execution may be issued in form against all; but the justice shall indorse thereon the names of such of the defendants who did not appear in the suit, as were not personally served with process of warrant, summons or attachment. Execution against joint debtors on process not personally served on all.

SEC. 12. Such execution shall not be served upon the persons of the defendants whose names are endorsed thereon; nor shall it be levied upon the sole property of any such defendant, who neither appeared in the suit nor was personally served with such process; but it may be collected of the several property of any defendant who appeared or was served personally with process, or of the joint or copartnership property of all the defendants. How execution served.

SEC. 13. If any execution be returned unsatisfied in whole or in part, a further execution for the amount remaining due may be issued upon the request of the plaintiff, or party interested therein, or the justice may renew the same by an endorsement thereon to that effect, signed by him, and dated when the same shall be made, which shall be deemed to renew the execution in full force, in all respects, for sixty days; if any part of such execution has been satisfied, the justice shall indorse on the execution the sum remaining due thereon. Issue of further execution or renewal of old one.

SEC. 14. An execution may be issued upon any judgment recovered before a justice of the peace, at any time within six years after such judgment shall have been rendered, for the collection of the whole or any part of such judgment remaining unpaid. Limitation of issue of execution.

SEC. 15. Whenever it shall appear from the docket, or on the trial, that any of the defendants are sureties, the justice shall note the same on the execution; and it shall be the duty of the officer executing the same, first, to levy on the goods of the principal, and if enough of such goods can be found to satisfy the execution, no levy shall be made on the goods of the surety. When property of sureties not to be levied on.

Property of
principal to
be first
exhausted.

SEC. 16. Every officer having an execution in his hands for collection, upon an affidavit being served upon him, made by any co-defendant in such execution, his agent or attorney, showing the principal debtor therein, shall first exhaust all the personal estate of said principal debtor, which may be turned out by any one of the defendants, before selling the property of any other defendant who may be surety in the demand upon which the judgment was rendered.

Indorsement
of time
of levy.

Notice.

SEC. 17. The constable, after taking goods and chattels into custody by virtue of an execution, shall indorse thereon the time of levying the same, and immediately give public notice by advertisement signed by himself, and put up at three public places in the city, village or township where such goods and chattels were levied upon, and in case the sale be made in any other city, village or township than that in which the levy was made, also in the city, village or township where said goods and chattels are to be sold, when and where they will be exposed for sale; and the said officer shall in no case remove said goods and chattels out of the county where said levy shall have been made.

Goods not
to be removed
from county.

What notice
to contain.

SEC. 18. Such notice shall describe the goods and chattels and shall contain the names of the parties to the suit upon which the execution issued, and shall be put up at least five days before the time appointed for the sale.

Sale of goods.

SEC. 19. At the time and place so appointed, or at such other time as the sale may be adjourned to within the life of the execution, the goods and chattels being present, and pointed out to the inspection and examination of the bidders, the constable shall expose them for sale at vendue to the highest bidder.

Return of
execution.

SEC. 20. The constable shall return the execution, and pay the debt or damages, and the costs levied, to the justice who issued the same; or in case of his death, absence or removal from office, then to the justice having the custody of his docket, returning the surplus, if any, to the person against whom the execution issued.

Completion
of service
after return
day.

SEC. 21. When an officer shall have begun to serve an execution issued out of any justice court, on or before the return day of such execution, he may complete the service and return thereof after such return day.

No constable
to levy, after
return day.

SEC. 22. No constable shall levy upon any property or imprison a defendant, upon any execution, after the time limited therein for its return, except as is provided in the preceding section.

Cost of
keeping
cattle, etc.

SEC. 23. When any cattle or other live stock shall be taken in execution, it shall be the duty of the justice who issued the execution or other justice charged with the duty of collecting the judgment whereon such execution issued, to allow the constable for keeping of the same, a reasonable compensation, to be taxed and collected as other costs in the suit.

Perishable
property.

SEC. 24. Whenever any constable shall, by virtue of any attachment or execution issued by any justice of the peace,

levy upon any peaches, blackberries, raspberries, strawberries, or other perishable property, he shall forthwith make his return to said justice, who by a written order shall authorize the constable to sell said property at such time, place and manner as said justice shall deem most beneficial to the defendant.

SEC. 25. No sale shall be made under the provisions of the preceding section, except upon the written order of the court from which proceedings shall have been issued, authorizing such sale at such time, place and manner as said court shall decree most beneficial to the defendant: *Provided*, That the court shall direct that notice be given to the defendant, or his agent, of the time and place of such sale, and the court shall direct how the notice shall be given.

Court to authorize sale.

Proviso, notice of sale.

SEC. 26. No constable shall, directly or indirectly, purchase any goods or chattels upon any sale made by him upon execution; and every such purchase shall be absolutely void.

No constable to purchase.

SEC. 27. For want of sufficient goods and chattels whereon to levy, the constable shall, in the cases authorized by law, if the execution require it, take the body of the person against whom the execution shall have issued, and convey him to the common jail of the county, the keeper whereof is hereby required to keep such person in safe custody in jail, until the debt or damages and costs shall be paid, or he be thence discharged by due course of law: *Provided*, That section forty-nine of chapter twenty-five of this act shall be applicable in such case.

When to take body of defendant.

Proviso, section applicable.

SEC. 28. If a constable shall neglect or refuse to return an execution, and pay over the moneys by him collected, within five days after such execution shall have been paid, or shall neglect to levy an execution, or otherwise execute the same according to law, the party in whose favor such execution was issued, or who shall be entitled to such moneys, may maintain an action of assumpsit, in his own name, upon the instrument of security given by such constable and his sureties; and in such suit the amount of the execution, with interest from the time of the rendition of the judgment upon which the same was issued, shall be recovered; and execution shall issue forthwith.

Neglect of constable.

Liability on bond.

SEC. 29. Every constable to whom any execution shall have been delivered, and whose term of office shall expire before the time within which the return or collection of such execution is required by law, shall proceed thereon in the same manner, and shall have the same powers in relation thereto, as if his term of office had not expired; and such constable and his sureties shall be liable for any neglect of duty, and for moneys collected upon such execution, in the same manner and to the same extent as if the term of office of such constable had not expired.

Constable to proceed after expiration of term.

Liability of sureties.

SEC. 30. If any constable to whom any execution shall have been delivered, shall die, become insane, or by sickness, or otherwise, be incapable of completing the service and

Death, etc., of constable before execution of writ.

return thereof, before such writ shall have been fully executed, any other constable may proceed thereon in the same manner that the constable to whom such writ was originally delivered might have done.

Set off of
executions
against one
another.

SEC. 31. Executions between the same parties, upon judgments recovered in their own right, may be set off, one against another, if required by either party, in the following manner: When one of the executions is delivered to a constable to be served, the person who is the debtor therein may deliver his execution to the same constable, and such constable shall apply the amount thereof, so far as it will extend, or so far as may be necessary, to the satisfaction of the first execution; and the balance due on the larger execution shall be collected and paid in the same manner as if there had been no set-off.

Disposition
of surplus.

SEC. 32. In all cases where any surplus money remains from the sale of any property, upon execution after the satisfaction of the judgment and costs, such surplus money shall be paid to and remain in the hands of the justice by whom such judgment was rendered, to be paid defendant in execution at any time when called for within two months from the receipt of the same by said justice: *Provided*, That, if said defendant does not call for said surplus money within two months aforesaid, it shall be the duty of the justice having charge of the same, to deposit such surplus money in the treasury of the township, giving notice to the clerk of the township in which such judgment was rendered, whose duty it shall be to charge the same to the treasurer of the township.

Proviso,
deposit in
treasury.

May be
claimed
within
six years.

SEC. 33. If the defendant, his agent or his legal representative, entitled to the possession of such money, shall appear within six years after the rendition of such judgment, and establish by his own affidavit or otherwise, to the satisfaction of the township treasurer, his right thereto, then he shall be entitled to receive the money, and shall give his receipt therefor; and the township board when settling with such treasurer, shall give him credit for said receipt: *Provided*, That in cities, the money shall be paid into the city treasury with like effect and like notice as above provided in the payment into the township treasury.

Proviso,
payment into
city treasury.

Chapter
applicable.

SEC. 34. The provisions of chapter twenty-three of this act, so far as they relate to the liability of personal property to levy under execution an exemption therefrom, and the manner of inventorying, appraising and selling such property, and setting out such exemptions shall be applicable in cases of attachment and executions issued from justice courts.

Section
applicable.

SEC. 35. The provisions of section fifty-five of chapter twenty-three of this act, relative to levies upon growing grain, or unharvested crops, shall be applicable to executions issued by justices of the peace.

How
judgments
against muni-
cipalities
enforced.

SEC. 36. No execution shall be issued upon any judgment rendered against a municipal corporation, but the proceedings for the enforcement of any such judgment shall be as provided in chapter twenty-four of this act.

CHAPTER LXXIII.

Of Civil Warrants.

SECTION 1. The plaintiff in actions arising out of, or founded upon contract, shall be entitled to a warrant, upon filing with the justice an affidavit made by the plaintiff, or some one in his behalf, that the plaintiff has good reason to believe:

When plaintiff entitled to warrant.

1. That plaintiff has a demand against the defendant for money collected by him as a public officer; or

2. That the plaintiff has a demand against the defendant for damages arising from the misconduct or neglect of the defendant in any professional employment or public office; or

3. That there was fraud or breach of trust; or that defendant does not reside in this State, and has not, for one month immediately preceding the time of making the application.

SEC. 2. In actions other than those founded on judgment or contract, the plaintiff shall be entitled to a warrant, if he or some person in his behalf shall make and file with the justice an affidavit specifying the nature of the demand, and containing a statement that the deponent has good reason to believe: Either

In other cases.

1. That the defendant has committed a trespass, or other wrong, to the damage of the plaintiff; or

2. That the defendant has incurred a penalty or forfeiture by the violation of some law of this State, which the person filing such affidavit has a right to prosecute in the name of the people of this State, or otherwise.

SEC. 3. In all cases on application for a warrant under the third subdivision of section one of this chapter, the person applying therefor shall, by affidavit, show the facts and circumstances within the knowledge of the person making such affidavit constituting the grounds of the application, whereby the justice may the better judge of the necessity and propriety of issuing such warrant.

Affidavit to show facts and circumstances.

SEC. 4. A warrant shall be directed to any constable of the county in which the justice issuing the same resides, and shall command such constable to take the defendant, and bring him forthwith before such justice, to answer the plaintiff in a plea to be mentioned therein, and shall require him, after he shall have arrested the defendant, to notify the plaintiff or prosecutor of the arrest.

Command of warrant.

SEC. 5. A warrant shall be served by arresting the defendant, and bringing him forthwith before the justice issuing the same; but if such justice, on the return thereof, shall be absent or unable to hear or try the cause, or if it shall appear by the affidavit of the defendant that such justice is a material witness in his behalf on the trial of the cause, the constable shall take the defendant before some other justice of the same township or city, if there be one therein.

Service of warrant.

Absence, etc., of justice.

qualified to try the same, and if not, then before some justice of an adjoining township or city, who shall take cognizance of the cause, and proceed thereon as if the warrant had been issued by him.

When justice
to try cause.

SEC. 6. When the defendant shall be brought before the justice on a warrant, the justice shall then, or within three days thereafter, unless the parties agree to allow longer time, or there be an adjournment, proceed to hear, try and determine the cause.

Adjournment;
disposition of
defendant.

SEC. 7. If such cause be adjourned on the application of the defendant, he shall continue during the time of the adjournment in the custody of the constable, unless he shall give bond to the plaintiff in the sum of two hundred dollars, with sufficient surety or sureties, to be approved by the justice, conditioned that the defendant will render himself in execution in case judgment shall be rendered against him in the suit, and that no part of his property liable to execution shall be removed, secreted or assigned, or disposed of, except for the necessary support of himself and family, until any judgment the plaintiff may obtain against him shall be satisfied, or until the expiration of ten days after the plaintiff shall be entitled to execution thereon.

When
defendant
discharged.

SEC. 8. If such cause be adjourned on the application of the plaintiff, the defendant, if the justice shall think it proper, shall be discharged from custody, but the cause shall not be discontinued by such discharge; and at the adjourned day the same proceedings shall be had as in case of a summons returned personally served.

CHAPTER LXXIV.

Of Replevin.

Affidavit.

SECTION 1. Whenever any plaintiff, his agent or attorney, shall make and file an affidavit with the justice, setting forth that his personal goods and chattels, not exceeding in value one hundred dollars, have been unlawfully taken, or are unlawfully detained by any other person, specifically describing such property, and giving the value thereof, and stating that the plaintiff is lawfully entitled to the possession of said property, that the same has not been taken for any tax, assessment, or fine, levied by any law of this State, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution, and claiming damages for the detention of the same, or taking the same, not exceeding one hundred dollars, in addition, and shall file with such justice a bond with sufficient surety or sureties, to be approved by the justice, and payable to the defendant in a penalty at least double the value of the property, as sworn to in the affidavit, and not less than one hundred dollars, with the condition prescribed in section eight of chapter twenty-seven of this act, with the justification of the

Bond.

sureties to said bond endorsed thereon, in writing and to be made under oath; the justice shall issue a writ of replevin, directed to any constable of the county, commanding him to take the property described, and return the same forthwith to the plaintiff, and that he summon the defendant to appear at a time and place therein to be named, before such justice to answer the said plaintiff concerning the unlawful taking or detention of the said goods and chattels; and in case of the neglect or refusal of said justice to require the sureties to said bond to justify in writing and under oath before issuing said writ, the said writ upon motion shall be dismissed, and the property taken by virtue thereof returned to the persons from whom it was taken, unless the plaintiff, on such motion being made, shall forthwith file with the justice a new bond in the form and penalty, in this section provided, with good and sufficient sureties, who shall justify their responsibility in the manner hereinbefore provided; and the justice shall be liable to the injured party in an action of trespass for any damage he may have sustained by reason of said writ having been issued.

Writ of replevin.

Justification of sureties.

Liability of justice.

SEC. 2. Such writ shall be returnable not less than six, nor more than twelve days from the date of the same, and shall be served not less than six days before the return thereof.

When writ returnable.

SEC. 3. All writs of execution in actions of replevin shall be returnable in the same time as other executions issued by justices.

Writs of execution, when returnable.

SEC. 4. The damages and value of the property mentioned in sections twenty-nine and thirty of chapter twenty-seven of this act, shall be ascertained by the justice, and no notice thereof shall be necessary, nor shall any exceptions be taken to the sureties of the plaintiff in the bond taken by the justice.

Damages and value of property, etc.

SEC. 5. In actions of replevin of beasts distrained, and in all cases, not in this chapter specially provided for, proceedings in replevin before a justice shall be governed by chapter twenty-seven of this act.

What chapter to govern proceedings.

CHAPTER LXXV.

Of Attachment.

SECTION 1. Any plaintiff shall be entitled to an attachment against a defendant in any action founded on a judgment or on contract, if such plaintiff, or some person in his behalf, shall make and file with the justice an affidavit specifying, as near as may be, the amount due to the plaintiff, and containing a further statement, that the deponent knows or has good reason to believe: Either

When plaintiff entitled to attachment.

Affidavit.

1. That the defendant has assigned, disposed of or concealed or is about to assign dispose of or conceal, any of his property, with the intent to defraud his creditors; or

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2. That he is about to remove any of his property from the county in which such application is made, or from the county where the defendant resides, with the like intent, or that he has removed, or is about to remove himself or his property from the county, and refuses or neglects to pay or to secure the payment of the debt; or

3. That he fraudulently contracted the debt or incurred the obligation respecting which the suit was brought; or

4. That the defendant has absconded, to the injury of his creditors, or does not reside in this State, and has not resided therein for one month, immediately preceding the time of making the application; or

5. That the defendant is a foreign corporation:

Proviso,
sufficiency of
affidavit.

Provided, That such affidavit shall not be deemed insufficient by reason of the intervention of a day between the date of the jurat to such affidavit and the issuing of the writ, and that when the person making such affidavit shall reside in any other county in this State than that in which the writ of attachment is to issue, one day's time for every thirty miles by the usual post route, from the residence of such person to the place from which such writ shall issue, shall be allowed between the date of such jurat and the issuing of such writ, and Sundays and legal holidays shall not be counted as intervening days in any case.

Bond.

SEC. 2. In all cases of attachment, the plaintiff shall before issuing the attachment, file with the justice a bond to the defendant, in the penal sum of two hundred dollars, with sufficient surety or sureties, to be approved by the justice in writing thereon, signed by him, conditioned to pay the defendant all damages and costs he may sustain by reason of the issuing of the attachment, if the plaintiff shall fail to recover judgment in such suit; and if the plaintiff's demand shall exceed one hundred dollars, the penalty of such bond shall be double the amount of such demand.

Contents of
attachment.

SEC. 3. Every attachment shall state the amount claimed by the plaintiff, and shall command any constable of the county in which the justice resides, to attach so much of the goods and chattels of the defendant (except such as are exempt by law from execution) as will be sufficient to satisfy such demand, and safely keep the same to satisfy any judgment that may be recovered by the plaintiff in such attachment, and to return the same at a time therein to be specified, not less than six nor more than twelve days from the date thereof.

Service of
attachment.

SEC. 4. The constable serving such attachment, shall execute the same at least six days before the return thereof, by seizing so much of the goods and chattels of the defendant within his county as shall be sufficient to satisfy the demand and costs, and making an inventory thereof, and serving a copy of such attachment and inventory upon the defendant, if he can be found within the county.

SEC. 5. If the defendant cannot be found within the county, the constable shall leave a copy of the attachment and inventory certified by him at the last place of residence of the defendant, if there be any such place within the county, and if not, then by leaving the same with any person in whose possession such goods and chattels, moneys and effects may be found, or in case garnishee proceedings shall be commenced simultaneously with the issuing of said writ, and no goods, chattels, or effects shall be found on which to levy such writ, then by leaving a certified copy of said writ with such garnishee defendant.

When defendant cannot be found.

SEC. 6. No goods or chattels attached shall be removed by the constable if a bond be executed and delivered to him by any person, with sufficient surety to be approved by such constable in a penalty at least double the sum stated in the attachment to have been sworn to, conditioned that such goods and chattels shall be produced to satisfy any execution that may be issued on any judgment that shall be recovered by the plaintiff upon such attachment; and thereupon the officer shall deliver the property attached to the person executing such bond.

Bond to prevent removal of goods.

SEC. 7. If any person other than the defendant shall claim any goods or chattels attached by a constable, he may, after such seizure, and at any time before execution shall have been issued upon the judgment obtained on such attachment, execute a bond to the plaintiff with sufficient sureties, to be approved by the constable or by the justice who issued the attachment, in a penalty double the value of the property attached, conditioned that in a suit to be brought on such bond, within three months from the date thereof, such claimant will establish that he was the owner of the goods seized at the time of the seizure, and in case of his failure to do so, that he will pay to such plaintiff the value of the property so attached, with interest.

Claimant of goods may give bond.

SEC. 8. Upon either of the bonds aforesaid being executed and delivered to the constable, he shall deliver up the property seized by him to the obligor in such bond.

Property to be delivered up.

SEC. 9. If the attachment be returned personally served upon any of the defendants, the justice shall proceed therein in the same manner as upon a summons returned personally served.

Proceedings upon personal service.

SEC. 10. If the attachment shall not be personally served upon any of the defendants, and none of the defendants shall appear on the return day thereof, the justice shall continue the cause for not less than thirty, and not exceeding ninety days; and in such case, no hearing shall be had or judgment rendered thereon; until the expiration of that time, unless the defendant shall sooner appear and request a trial; in which case the justice shall appoint a day for the trial of such suit, and cause notice thereof to be given to the plaintiff.

Attachment not personally served.

SEC. 11. When there are several attachments against the same defendant in the hands of the same officer, they shall be

Several attachments against defendant.

executed in the same order in which they were received by the officer.

Different attachments of same property.

SEC. 12. Different attachments of the same property may be made, and one inventory shall be sufficient; the lien of the attachments shall be in the order in which they were served, and the subsequent attachments shall be served on the property as in the hands of the officer, and subject to the prior attachment; the justice who issued the attachment, having the priority of lien, shall determine all questions as to priority of liens on the property attached.

Priority of lien.

Animals or perishable property.

SEC. 13. When the cause is continued as provided for in the tenth section, and it shall appear that any of the property taken under the attachment consists of animals or perishable property, the justice may make an order directing the officer having the custody thereof, to dispose of the same, as upon execution, and the money realized therefor shall be paid over to the justice, and applied as other money realized from the sale of the property attached, is applied.

When plaintiff to have judgment.

SEC. 14. The plaintiff shall not have judgment in any such action, except in some one of the following cases, to wit:

1. When the property of the defendants, or one of them, if there are several, shall have been attached in the county where the action is brought; or

2. When the defendant, or one of them where there are several, shall have been personally served with process, or shall have appeared; or

3. When a garnishee shall have been summoned, who shall be found indebted to the defendant or defendants, or to have property or effects in his hands, subject to the attachment.

No property attached not to affect garnishee.

SEC. 15. The return, that no property was found on the attachment shall not affect the proceedings against the garnishee.

Bond for discharge of property.

SEC. 16. If, at any time before judgment, the defendant shall appear and answer to the action, and shall give a bond to the plaintiff, in a penalty double the amount claimed by the plaintiff, with one or more sureties, to be approved by the justice, conditioned to pay any judgment the plaintiff may recover against him in the action, within thirty days after the rendition thereof, the justice shall thereupon make an order discharging the property attached.

Inventory.

SEC. 17. In returning a writ of attachment, the officer shall also return a copy of the inventory of the property attached, certified by him, and any bond which may have been executed and delivered to him pursuant to the foregoing provisions.

Garnishee in attachment.

SEC. 18. That any person or corporation indebted to the defendant in any attachment suit, or who has any property or effects belonging to said defendant, may be summoned as a garnishee of such defendant in such attachment proceedings. The proceedings against the garnishee shall be conducted in the same manner as other garnishment cases in justice's court. Such garnishee proceedings may be commenced simultaneously with the issuing of the writ of attachment, or while

Proceedings.

such attachment suit is pending, and shall be deemed auxiliary to the proceedings in attachment, but shall be entered separately upon the justice's docket, the same as in other garnishee cases. If the disclosure shows that the garnishee is indebted to the defendant in attachment, or that such garnishee has any money, property, credits, or effects in his or its hands, or under his or its control, the plaintiff in attachment shall be entitled to judgment in such attachment proceedings the same as in the case of property attached, and shall also be entitled to judgment against the garnishee as in other cases.

SEC. 19. Whenever an action shall be commenced by attachment against a foreign corporation, and proceedings by garnishment shall also be commenced in the same action, if it shall appear on the return of the writ of attachment that a copy thereof, and also copies of all garnishee summons issued in said action, have been personally served on any officer, member, clerk or agent of such foreign corporation within this State, the same proceedings may be thereupon had in said action against said corporation, in the same manner as upon the return of a summons personally served in actions against natural persons; and in all cases of proceedings by garnishment against corporations, whether foreign or domestic, service of any process in the manner above provided for in case of foreign corporations, shall have like force and effect as personal service upon natural persons.

Action against foreign corporation by attachment and garnishment.

SEC. 20. The rights and liabilities of garnishees in such cases, and the proceedings against them, shall be the same in all respects as is provided by law in other cases of garnishment.

Rights and liabilities of garnishees.

SEC. 21. In all cases where the attachment shall not have been personally served, and the defendant shall not have appeared in the suit, judgment shall be rendered and execution may be issued in the same form as if such attachment had been personally served; but such judgment shall not be conclusive against the defendant, except as to the property attached, and such execution shall only authorize the officer to whom it is directed to sell the property attached in such suit.

Judgment without personal service or appearance.

Effect.

SEC. 22. The provisions of sections fifty-six and fifty-seven of chapter twenty-three of this act, relating to levies upon perishable property, shall be applicable to attachment cases in justice's court.

Perishable property.

SEC. 23. Application may be made for the dissolution of any attachment issued under the provisions of this chapter, in the manner provided for in chapter twenty-six of this act.

Dissolution of attachment.

SEC. 24. Whenever, in any suit commenced by writ of attachment, any animals shall have been seized by virtue of such writ, and expense shall have been incurred in the keeping thereof, it shall be the duty of the justice of the peace before whom the suit is pending, at the time of the trial thereof, to examine witnesses and take proof offered by the

Animals attached.

Expense of
keeping.

parties as to the expense of the keeping of such animals, from the time of their seizure up to and including the day of trial, and to determine and adjudge the amount of such expense, and to incorporate the same into the judgment as a part thereof, in case judgment shall be rendered in favor of the plaintiff; and the docket of the justice shall contain an entry of the amount so determined, and execution shall issue upon such judgment as in like cases is otherwise provided.

CHAPTER LXXVI.

Of Garnishment.

Affidavit.

SECTION 1. In any action commenced before a justice of the peace founded upon contract, or upon or after judgment if the plaintiff, his agent or attorney shall make and file with such justice an affidavit stating that he has good reasons to believe, and does believe that any person, naming him, has property, money or effects in his hands, or under his control, belonging to the defendant, or any, or either of the defendants in such suit, judgment or decree, or that such person is indebted to such defendant, or any or either of the defendants, and further stating whether or not the amount due from the garnishee defendant to the principal defendant is for the personal work and labor of such principal defendant, or any member of his family, the justice shall issue a summons against such person, requiring him to appear before such justice, at a time and place mentioned in the said summons, not less than six nor more than twelve days from the date thereof except as provided in section four of this chapter, and answer under oath all questions put to him touching his indebtedness to such defendant, or any or either of the defendants, naming him or them, and the property, money or effects of the defendant, or any or either of the defendants in his possession, within his knowledge or under his control, which summons, except as otherwise provided, shall be served and returned in the same manner as a summons issued against a defendant in other cases, and such suit may be entered on the docket as suits in other cases. Said garnishee summons shall state the amount claimed by the plaintiff to be due from the principal defendant.

Summons.

Service and
return.

Form of
summons.

SEC. 2. The summons issued in pursuance of section one of this chapter may be substantially in the form of the ordinary justice's summons, and need not recite either the commencement of suit by the plaintiff against the principal defendant, or any of the allegations contained in the affidavit for garnishment theretofore filed, but shall contain a command to summon such garnishee to answer in the suit in substantially the following form: "To answer, under oath, all questions put to him touching his indebtedness to A. B., principal defendant at the suit of C. D., plaintiff herein,

and the property, money, and effects of the said A. B. in his possession, within his knowledge, or under his control, according to the allegations contained in the affidavit of said C. D. (or E. F., agent of said C. D.), duly made and filed in this suit."

SEC. 3. Any garnishee may be released and the garnishment proceedings dismissed upon the defendant giving a bond with two sureties to the plaintiff, in double the amount claimed to be due the plaintiff in the action, conditioned that if the plaintiff recover, the defendant will pay the judgment and costs within five days after the final determination of said suit. The sureties in such bond shall justify their responsibility under oath, and shall be approved by the justice before whom the action is pending. Bond for release.

SEC. 4. If it shall appear by the affidavit, filed as aforesaid, that the amount sought to be reached as being due from the garnishee defendant to the principal defendant, is for the personal work and labor of such principal defendant, or any member of his family, the justice shall issue a summons returnable in not less than two days, nor more than six days from the date thereof, which summons shall be served at least two days before the time of appearance mentioned therein. When amount is for personal work and labor, etc.

SEC. 5. The person summoned as garnishee, from the time of the service of such summons, shall be deemed liable to the plaintiff in such suit, to the amount of the property, money and effects in his hands or possession or under his control, or due from him to the defendant in such suit, but not to exceed the amount of plaintiff's demand and the total cost which he may tax: *Provided*, That when the defendant is a householder having a family, nothing herein contained shall be applicable to any indebtedness of such garnishee to the defendant for the personal labor of such defendant, or his family to the amount of sixty per centum of such indebtedness, but in no case shall more than thirty dollars of such indebtedness, be exempt from the operation of this chapter, and in all cases at least eight dollars shall be so exempt: *Provided further*, That in case the defendant is not a householder having a family, nothing hereinbefore contained shall be applicable to any indebtedness of such garnishee to the defendant for the personal labor of such defendant to the amount of thirty per centum of such indebtedness, but in no case where the principal defendant is not a householder shall more than fifteen dollars of such indebtedness be exempt from the operation of this chapter, although in all cases of the description mentioned in this proviso at least four dollars shall be so exempt. Liability of garnishee. Proviso, householder. Further proviso, not householder.

SEC. 6. If such garnishee neglect or refuse to appear at the time and place mentioned in such summons, and answer as aforesaid, the justice shall continue the cause to some other day; and without further showing than the officer's return, that the summons had been personally served upon the Warrant for garnishee.

garnishee and his fees paid or tendered, issue a warrant to bring such garnishee before him.

Command
warrant.

SEC. 7. Such warrant shall command the officer forthwith to take the body of such garnishee, and bring him before such justice, and shall contain a further command that such officer, after he shall have arrested the garnishee, notify the plaintiff of such arrest; and such warrant shall be served and returned in the same manner as warrants issued in other cases.

Service and
return.

Personal
service
deemed com-
mencement
of suit.

SEC. 8. The personal service of a summons upon such garnishee shall be deemed the commencement of suit in the name of the plaintiff against such garnishee, which summons may be served in the same or adjoining county in this State, and require the appearance of such garnishee before such justice at his office in the same or any adjoining counties of this State, and a constable or sheriff of either county may serve the same: *Provided*, The lawful fees for travel and attendance shall be paid or tendered to such garnishee at the time of such service, and such suit may be entered on the docket as suits in other cases.

Proviso, fees.

Examination
of garnishee.

SEC. 9. On the appearance of such garnishee before such justice, or on some other day to which the same may be adjourned, the plaintiff, or principal defendant may proceed to examine the garnishee on oath, or otherwise, as the plaintiff or principal defendant may elect, touching the matters alleged in the affidavit, and the justice shall take minutes of such examination, and file the same with the other papers in the cause. Upon such examination, the garnishee shall not be deemed a witness for the plaintiff, and his answers or disclosures upon such examination may be contradicted or controverted by the plaintiff, or the principal defendant. If it should appear upon such examination or disclosure that the money owing from the garnishee defendant is for personal work and labor performed by the principal defendant, or some member of his family, and is then due and payable, such garnishee defendant shall forthwith pay to the justice the money shown by the disclosure to be due, and it shall be the duty of the justice to give to the garnishee defendant a receipt for the money so paid.

Garnishee not
deemed
witness for
plaintiff.

Payment
to justice.

Payment of
exemptions to
defendant.

SEC. 10. Upon satisfactory proof being presented to the justice by the principal defendant, by affidavit, or otherwise, of the amount of his exemptions, in the money so paid to the justice, it shall be the duty of the justice forthwith to pay to said principal defendant, such money, or so much thereof as may be exempt to such principal defendant, under the provisions of this chapter.

Action for
exemptions.

SEC. 11. If such garnishee defendant shall fail or neglect forthwith to pay such money so due into court, as hereinbefore required, then such principal defendant may bring an action against such garnishee defendant for the recovery of so much thereof as is exempt, and the pendency of such garnishee proceedings shall not be a bar to such action.

SEC. 12. Upon closing the examination, or upon filing the disclosure, in cases where a written disclosure is permitted, or at any time thereafter, the garnishee may pay to the justice before whom the examination was had, all money then due and owing by him to the defendant, as shown by his disclosure, and thereupon such justice shall execute and deliver to the garnishee a release and discharge for the money so paid, and enter such discharge upon his docket. If the plaintiff shall have recovered a judgment against the defendant, and the time limited by law for an appeal shall have expired, if no appeal has been made, the justice shall pay to the plaintiff in said cause out of such moneys, the amount of the judgment and taxable costs, and the surplus, if any. he shall pay to the principal defendant. If the plaintiff shall not have recovered a judgment against the defendant, the said justice shall retain said moneys in his hands until the final disposition of the cause, when he shall dispose of the same in the manner aforesaid: *Provided*, That if a judgment shall have been recovered against the defendant, and an appeal shall have been taken therefrom by the defendant, the said justice shall forthwith pay over said moneys to the principal defendant.

Payment
of money
to justice.

Discharge.

Payment of
judgment
and costs.

Proviso,
payment to
defendant.

SEC. 13. In the event that the garnishee does not pay the money into court, in accordance with the provisions of the last preceding section, if the plaintiff shall have recovered a judgment against the defendant, and if the time limited by law for an appeal has expired, and no appeal has been taken, the plaintiff may immediately declare against the garnishee in the manner provided by section sixteen of this chapter, and the like proceedings shall be had as in a suit brought against his debtor; but if the principal suit shall be pending and undetermined between the plaintiff and the defendant, the cause shall be continued, but it shall not be necessary to adjourn the same to any day certain.

Declaration
against
garnishee.

Proceedings.

SEC. 14. After the final determination of the suit against the defendant, if the garnishee shall not have paid the money due from him to the principal defendant into court, and if no appeal shall have been taken, and at any time within thirty days after such final determination of the suit, and in cases of garnishee proceedings commenced after the rendition of a judgment against the defendant therein, within thirty days after the closing of the examination in such garnishee proceedings, the justice shall, at the request of the plaintiff, his agent or attorney, issue a summons against the garnishee, commanding him to appear before the justice to show cause why a judgment should not be rendered against him.

Summons to
show cause.

SEC. 15. Such summons shall be made returnable not less than two nor more than six days from the date thereof, and shall be served at least two days before the time of appearance mentioned therein.

When
returnable.

When
plaintiff
may declare
against
garnishee.

SEC. 16. In all cases where a judgment has been rendered against the defendant, and also after a final determination of the suit pending against the defendant, as mentioned in section fourteen of this chapter, and the garnishee has been duly summoned to appear and show cause, the plaintiff may declare against the garnishee for the property, moneys and effects above mentioned, in trespass on the case; or if the garnishee be indebted to the defendant, in assumpsit, or if the garnishee shall have property, moneys and effects of the defendant in his possession, and shall also be indebted to the defendant, the plaintiff may declare in trespass on the case, and add thereto a count in assumpsit, and may give the special matter in evidence; and the garnishee may plead thereto, and issue may be framed and tried as if the defendant had brought such suit against the garnishee for the matters set forth in such declaration, and either party shall be entitled to an appeal or other process as in other cases. The answers or disclosure of the garnishee made as in this chapter provided shall not be conclusive of the truth of the matters therein set forth, but upon the trial of any issue between the plaintiff and the garnishee, the plaintiff may introduce evidence to contradict, or otherwise controvert, the truth of the said answers or disclosure.

Plea.

Answers of
garnishee
may be con-
troverted.

What deemed
discontin-
uance against
garnishee.

SEC. 17. If the plaintiff fail to recover judgment against the defendant, or if the defendant pay the judgment rendered in such case, it shall in either case be deemed a discontinuance of all proceedings against the garnishee.

Execution.

SEC. 18. If judgment be rendered against the garnishee, the justice may issue execution thereon as in other cases; such execution may be directed to the sheriff, or any constable of the county where such justice resides, or to the sheriff or any constable of any county in this State, and may be fully executed in the county to which it is directed; but if the body of such garnishee be taken in such execution, he shall be committed to the jail of the county in which he resides.

When
body taken.

Costs against
garnishee.

SEC. 19. If the garnishee shall, on demand, deliver to the officer having such execution, all the property, money and effects in his possession or under his control, belonging to the defendant, and pay all moneys found to be due from him to the defendant at the time the suit was commenced against him, or so much of the money, property or effects as may be necessary to satisfy such execution, then the costs which may have accrued against such garnishee shall be paid out of the property, moneys and effects so paid over or delivered to such officer.

Indorsement
of moneys,
etc., received
on execution.

SEC. 20. The officer having such execution shall endorse all moneys received from such garnishee, and a description of all property and effects delivered to him by the garnishee; and such delivery or payment shall be deemed a delivery or payment to the defendant in such suit.

Return of
execution.

SEC. 21. Upon the return of such execution so endorsed, the same shall be entered on the docket of the justice as fully

as such return appears upon such execution, and such entry or a transcript thereof shall be prima facie evidence of the facts therein stated.

SEC. 22. Whenever the garnishee shall pay or deliver to the officer having such execution any property which may be sold on an execution by existing laws, the officer shall proceed to levy upon and sell the same at public auction or vendue as in other cases, and if the garnishee shall deliver to such officer any notes, bills, bonds or other choses in action, the officer shall return the same to the justice, to be retained in his hands for the use of the plaintiff, and the plaintiff may sue and collect the same, or so much thereof as may be necessary to pay the judgment against the defendant, and the costs. The balance, if any, shall be returned to the garnishee or the defendant. All bills, bonds, notes, accounts and other choses in action received or delivered under the provisions of this section, shall be taken subject to all liens, set-offs, rights, liabilities and equities existing between the original parties thereto.

Levy and sale of property.

Notes, bills, bonds, etc.

Balance.

Liens, etc.

SEC. 23. If the garnishee pay to the officer having such execution any bank note or bill, the same shall be paid over to the plaintiff at the par value thereof, if he will accept the same; if not, it shall be sold in the same manner as other personal property.

Bank notes treated as cash.

SEC. 24. Judgments rendered against the garnishee under the provisions of this chapter, shall have the same force and effect as they would have under existing laws, if such defendant had been named as plaintiff therein.

Force and effect of judgment.

SEC. 25. No suit shall be maintained or recovery had by such defendant against the garnishee for the amount of money sworn, proved or admitted to be due from such garnishee to the defendant, or for the property, or the value thereof, money or effects in the hands of such garnishee as aforesaid, while such proceeding is pending.

Suit of defendant against garnishee barred.

SEC. 26. The preceding section shall not be so construed as to prevent such defendant from prosecuting for and recovering of such garnishee any other or further sum of money due from such garnishee, or the possession, or value of any other property or effects in the hands of such garnishee, belonging to such defendant.

Exception to bar.

SEC. 27. Bills of exchange and promissory notes, whether due or not due, in the hands of the garnishee at the time of the service of the summons, shall be deemed "effects," under the provisions of this chapter.

Bills and notes declared effects.

SEC. 28. If it shall appear upon any examination or trial had under the provisions of this chapter, that any sum or sums of money is or are owing and payable from the garnishee to the defendant at some future time or times, it shall be the duty of such court, after such examination or the rendition of the verdict (if a trial by jury is had), and after the trial (if the cause is tried by the court), to note the time or times when the sum or sums of money mentioned in this sec-

Money to become due in future.

tion shall become due and payable, and shall thereupon continue the cause until after the time or times so noted.

Summons in such cases.

SEC. 29. After the said sum or sums of money become due and payable as mentioned in the preceding section, the justice or court shall, at the request of the plaintiff, issue a summons against the garnishee as mentioned in section fourteen of this chapter, returnable in the same time, and the same proceeding shall be had thereon, and with the like effect as if the said sum or sums of money had been due and payable at the time of the service of the summons.

Proceedings against corporations.

SEC. 30. All corporations of whatsoever nature, whether foreign, domestic, municipal or otherwise, except counties, may be proceeded against as garnishees in the same manner and with like effect as individuals under the provisions of this chapter, and the rules of law regulating proceedings against corporations and the provisions of law regulating the service of summons from justice court upon such corporations in other cases, shall be applicable to the service of summons in garnishment cases, and such service may be made in the same or any adjoining county.

Duty of officer served, etc.

SEC. 31. It shall be the duty of the officer or person so served, or the proper officer of such corporation having knowledge of the facts, to appear before the justice at the return day of the summons and answer thereto, or to answer at his option in writing, verified by his oath before some person authorized to administer oaths and transmit the same by mail or otherwise to the justice issuing said summons, on or before the return day thereof, which shall be deemed a sufficient compliance with such summons, and all proceedings thereafter shall be the same as in garnishment cases against individuals.

When corporation deemed indebted to defendant.

SEC. 32. If said corporation shall not so appear or so answer, if a judgment shall have been obtained against said principal defendant, and the time for taking an appeal therefrom shall have expired, and if no appeal shall have been taken, such corporation shall be held to be indebted to the defendant in the original suit to the amount of the judgment against the principal defendant, unless within three days after the return day of such summons, such corporation shall appear and show a sufficient reason to the satisfaction of the justice for having failed to answer such summons, and the justice shall thereupon on the third secular day render judgment against such corporation as against other garnishees, for the amount of such debt and with like effect; but on such cause being shown, such officer may make disclosure and be examined as other garnishees and proceedings thereafter shall be the same as though answer had been made within the time limited therefor. If judgment shall not have been rendered against the principal defendant, or if judgment shall have been rendered and the time for appeal shall not have expired, said garnishment case shall stand adjourned until the determination of the principal suit, and

Judgment.

Disclosure, on cause shown.

the proceedings thereafter shall be the same as in cases against individuals. When garnishment adjourned.

SEC. 33. No summons in garnishment shall issue against a municipal corporation, under the provisions of the preceding section, until a judgment shall have been rendered against the defendant in the principal suit. Summons against municipality.

SEC. 34. When any corporation shall wish to appeal, in cases where it has not answered as garnishee, it shall in addition to the other requirements of law, file with the justice a full and complete answer in writing as such garnishee, verified by the oath of an officer of the corporation having knowledge of the facts. Appeal.

SEC. 35. When the examination or disclosure of the garnishee shall disclose that any other person or corporation than the defendant claims in whole or in part the money, property, or indebtedness due by him, or in his possession, and the name and residence of such claimant, the garnishee may deliver such money, property or indebtedness to the justice, who shall cause to be served on such claimant a written notice to appear in said court and maintain his said claim; such notice shall contain the names of the parties to the principal and garnishee suits, the name and place of residence of the justice, the return day or adjourned day of the garnishee suit, and the substance or a copy of the disclosure, and shall be served at least ten days before the return or adjourned day of the garnishment suit; the notice may be served in any county in this State; in other respects it shall be served in the same manner as summonses from justices' courts; for the purpose of giving an opportunity of serving the notice above provided, it shall be the duty of the justice, on the return day of the garnishment suit, to adjourn such suit not less than ten nor more than thirty days. After the service of such notice and the payment or delivery to the justice of the money, property or indebtedness, as above provided, the garnishee shall be discharged from all liability to any person in respect to the money or property so paid or delivered; and the proof of the service of such notice filed in the suit, and the certificate or docket entry made by the justice of such payment or delivery, shall be prima facie evidence of the fact stated therein. The claimant shall appear in the suit on the return or adjourned day named in the notice served upon him as aforesaid, and in default thereof judgment shall be rendered against him in respect to his claim. The defendant or defendants so notified, shall be considered as defendants in the place and stead of the garnishee, and an issue may be formed between the plaintiff and such defendants in the same manner as provided in section sixteen of this chapter; the issue may be tried by the justice or by a jury, as in other cases, and such judgment shall be rendered between the parties as shall be just, and such substituted defendant or claimant shall have the same right to Money, property, etc. claimed by third party. Notice to appear. When garnishee discharged. Appearance in suit. Trial of issue.

Proviso,
when section
inoperative.

appeal as the original garnishee: *Provided*, That this section shall not be operative when the answer of the garnishee shall disclose that such claimant does not reside in the State; nor in case such claimant is a corporation which cannot be served within the State.

When
garnishee to
be released.

Appeal by
plaintiff.

Proceedings.

SEC. 36. In all cases where the defendant takes an appeal from the judgment in justice court, and in all cases where the judgment in justice court becomes final in favor of said defendant, the justice shall make and deliver an order or orders releasing the garnishee or garnishees from all liability. In all cases where the plaintiff shall appeal from the judgment rendered in justice court, the justice in making return to such appeal shall return all garnishment proceedings auxiliary to such suit, together with the main action to the court to which the appeal is taken, and thereafter proceedings against the garnishees may be conducted in said last mentioned court in the same manner in all respects as if originally commenced therein; and for the purpose of such subsequent proceedings, the answer or answers of the garnishee or garnishees made in justice court shall be considered as made in the court to which the appeal is taken upon the day upon which the justice shall make his return to such appeal.

CHAPTER LXXVII.

Of Fees of Justices, Jurors, Constables and Witnesses.

Fees of
justices.

SECTION 1. Justices of the peace shall be entitled to the following fees in civil cases: For a summons, warrant, or venire, fifteen cents; for trying each cause, one dollar for the first day, and for each additional day the sum of one dollar; for issuing a writ of replevin or attachment, twenty-five cents; for entering any cause upon the docket after return of process, twenty-five cents; and for making all other entries upon the docket in any cause not otherwise provided for, twenty-five cents; for each subpoena not exceeding four, ten cents; for swearing a jury, ten cents; for swearing each witness in a cause, ten cents; for entering every final judgment, twenty-five cents; for issuing execution, twenty-five cents; for every continuance or adjournment at the request of the party, fifteen cents; for drafting any bond or recognizance, requisite in any case before a justice of the peace, thirty-five cents; for approving any bond or recognizance, ten cents; for reducing the evidence, objections to evidence, and exceptions taken by either party, upon the trial of any cause, ten cents for each folio; for making and filing return upon appeal, one dollar; for taking depositions, examinations or confessions, ten cents for each folio; for entering a discontinuance or satisfaction, ten cents; for entering every assignment of a judgment, fifteen cents; for entering an amicable suit, twenty-five cents; for marrying and making return thereof, two dollars; for taking acknowledgment of a deed

or other instrument, twenty-five cents for each person acknowledging; for making a certified transcript of any judgment and of the proceedings in any cause, fifty cents; for certifying cause to the circuit court on plea of title, fifty cents; for making return on special appeal or certiorari, two dollars; and no justice of the peace shall receive any other fees or compensation for any services rendered in any civil cause than such as is hereinbefore provided.

Other fees prohibited.

SEC. 2. Each juror sworn in a justice court, shall be entitled to receive one dollar for each day's attendance, and one-half dollar for each half day's attendance as such juror, and the party requiring such jury shall be liable for the fees of such jury and shall advance the fees for one day's attendance before the venire shall be issued, and the fees for each succeeding day before said jury shall be required to sit and hear testimony or give any verdict in the same. And in case the party so calling for a jury shall refuse at any time to advance the fees, the jury, if impaneled, shall be discharged and said cause shall proceed as though no jury had been demanded in the first instance. And at the time of the discharge of such jury, the officer to whom such fees were advanced shall pay to each juror so much of said fees as he shall be entitled to and return the balance, if there be any, to the party from whom it was received; and when the party requiring such jury shall prevail in such action or proceeding, the whole of the fees to which such jury shall be entitled shall be taxed as costs in his favor, in addition to the costs provided by section three of chapter seventy-one of this act.

Fees of jurors.

To be taxed as costs.

SEC. 3. Constables shall be entitled to the following fees in civil cases:

Fees of constables.

For serving a warrant, fifty cents; for serving a summons, twenty-five cents;

For a copy of every summons delivered on request, or left at the dwelling of the defendant, in his absence, ten cents;

For serving an attachment or writ of replevin, seventy-five cents; and for a copy thereof, and of the inventory of the property seized, twenty-five cents;

For serving a subpoena, fifteen cents for service upon each witness summoned by him;

For serving an execution on the body or goods and chattels of the defendant, fifty cents;

Committing a defendant to prison on execution, fifty cents;

For traveling in the service of process, ten cents for each mile necessarily traveled from the place of service to the place of return;

Summoning a jury, seventy-five cents;

Attending upon a jury, fifty cents;

For collecting and paying over money on executions, four per cent upon all sums not exceeding two hundred dollars, and for all sums over that amount, two per cent;

Advertising sale of property, fifty cents;

Selling property, fifty cents;

For attending a circuit court at the request of the sheriff, one dollar and fifty cents for each day, to be paid out of the county treasury.

Fees of
witnesses.

SEC. 4. Witnesses attending any justice's court shall be entitled to receive from the party requiring their attendance, the following fees: For each day's attendance, one dollar; for each half day, fifty cents; and ten cents for each mile necessarily traveled in going to the place of attendance by the usually traveled route.

CHAPTER LXXVIII.

Of Appeals.

Appeal to
circuit court.

SECTION 1. Any party to a judgment rendered by a justice of the peace, conceiving himself aggrieved thereby, may appeal therefrom to the circuit court for the county where the same was rendered, in the following cases:

1. Where final judgment was rendered on an issue of law joined between the parties;

2. Where final judgment was rendered on an issue of fact joined between the parties;

3. Where the defendant did not appear and plead, and final judgment was rendered for the plaintiff on the merits of his claim;

4. Where a judgment of non-suit has been rendered.

Affidavit.

SEC. 2. The party appealing under the provisions of the preceding section shall, within five days after the rendition of the judgment, present to the justice an affidavit made by himself, his agent, or attorney, before any person authorized to administer oaths, stating that such judgment is not in accordance with the just rights of such party, as the person making such affidavit verily believes, and in case there shall be any objection to the process, pleadings or other proceedings, and to the decision of the justice thereon, which would not be allowed to be made on the trial of the appeal, the same may be set forth specifically in the affidavit.

Bond on
appeal.

SEC. 3. The party appealing under the provisions of the preceding section shall also, within five days after the rendition of the judgment, deliver to the justice a bond or recognizance to the adverse party, in conformity with the following provisions:

1. It shall be in a penalty not less than fifty dollars, and not less than double the amount of the judgment, excluding costs;

2. It shall recite the judgment so far as to exhibit the names of all the parties, the character in which they prosecuted or defended before the justice, the amount recovered, and the name of the justice;

3. It shall contain a condition that the appellant will prosecute his appeal with all due diligence, to a decision in the circuit court, and that if a judgment be rendered against

him in such court, he will pay the amount of such judgment, including all costs, with interest thereon, and if his appeal shall be discontinued or dismissed that he will pay the amount of the judgment rendered against him, if any, in the justice's court including all costs, with interest thereon;

4. It shall be executed by the appellant, with one or more sufficient sureties, or by two or more sufficient sureties without the appellant. Such bonds or recognizances may be taken by the justice by whom the judgment was rendered, or by any other justice of the peace of the same county, or by the county clerk of the same county: *Provided*, That no other justice of the peace or county clerk shall approve any such bond or recognizance when approval thereof has been denied by the trial justice for or on account of the insufficiency thereof, and every justice of the peace who shall refuse to approve any such bond or recognizance because of the insufficiency thereof shall endorse such fact in writing upon such instrument.

Proviso,
approval by
other justice.

SEC. 4. No justice of the peace or county clerk shall take any bond or recognizance on appeal, as hereinbefore provided, unless the person or persons entering into the same as surety, justifies his or their responsibility in writing, and under oath, which justification shall be endorsed on said bond.

Sureties to
justify.

SEC. 5. Such justification shall not be necessary when the opposite party, or his attorney, admits the pecuniary responsibility of such surety or sureties to be sufficient; and it shall be the duty of the justice, at the time of taking such bond or recognizance to certify whether the surety justified, or his responsibility was admitted as aforesaid.

When
justification
not necessary.

Duty of
justice.

SEC. 6. The appellant shall, within the said five days, in addition to the making and filing of an affidavit and bond, pay to the justice the taxable costs of the prevailing party, together with the sum of one dollar for making his return to said appeal, and the further sum of three dollars as clerk and entry fee, to be paid by said justice to the clerk of the court to which said appeal is taken, which sum, three dollars, shall be paid by the justice to the clerk of the court at the time of delivering the papers pertaining to the appeal, to said clerk, and no appeal shall be allowed until the foregoing conditions are complied with, and all species of appeals ordered or directed by any court or judge, shall be and are hereby made subject to the same provisions of payment.

Costs and
entry fee
to be paid.

SEC. 7. When the term of office of a justice shall expire, or otherwise become vacant, between the rendition of a judgment by him and the time limited for appealing, such justice may take and approve of the bond or recognizance, and it shall be his duty to make return to such appeal in like manner as if he was in office at the time of taking such bond or recognizance, and of making such return.

When
justice's
term expires.

SEC. 8. Appeals may be authorized by the circuit court, or by the circuit judge at chambers, after the expiration of five days, when the party making the appeal has been prevented

When circuit
court may
authorize
appeals.

Service upon attorney.	from taking the same by circumstances not under his control. And in all such cases where the party in whose favor such judgment was rendered appears by an attorney or agent, it will be sufficient to serve such attorney or agent with the notices of all subsequent proceedings in said cause, and all orders made by said court or judge may be served on said attorney or agent, and such service shall have the same effect as though the same was made on the party in whose favor such judgment may have been rendered.
How bond or recognizance served when justice absent.	SEC. 9. The affidavit and bond or recognizance, in case of the absence from his dwelling house of the justice by whom the judgment was rendered, may be served on any member of his family of suitable age, and the costs and fees may be paid to such person.
When property to be released.	SEC. 10. If an execution shall have been issued before an appeal is taken, on a certificate being presented to the officer holding the execution, showing such appeal, he shall forthwith release the property, or the body of the party against whom the same was issued, which may have been taken; and if such party shall have been committed to prison, upon service of the like certificate upon the jailor, he shall release him from imprisonment.
Return of justice to appeal.	SEC. 11. Within ten days after any appeal shall have been made, the justice shall make a return of the proceedings had before him to the circuit court for the county, in which shall be stated: <ol style="list-style-type: none">1. The title of the cause, and the character in which the parties prosecuted or defended before him;2. The demand of the plaintiff; and if his declaration was in writing, a copy thereof shall be set forth;3. The plea of the defendant, and any notice of set-off or matter of defense given by him, and all other proceedings of the parties upon which a trial was had or an issue was framed; and if in writing, copies thereof shall be set forth;4. If the trial was by jury, the names of the jurors and their verdict;5. The judgment rendered, and the time of rendering the same; and6. The time when the affidavit and bond or recognizance hereinbefore required were delivered to the justice and the fees of the justice were paid.
Additional particulars to be returned.	SEC. 12. The justice, in addition to the particulars required by the preceding section, shall make a full and complete return as to all matters stated and set forth in such affidavit mentioned in the latter part of section two of this chapter, and shall also return copies of all processes, returns, pleadings and affidavits upon which any process issued or motion was made, and so much of the evidence and proceedings as may be necessary fully to exhibit the questions, motions and decisions, made and presented in such cause.
Return, when to be filed.	SEC. 13. Within ten days after the appeal shall be duly made, the justice shall file with the clerk of the circuit court,

his return made as above directed, together with all papers filed with him by either party relating to the cause, and the affidavit and bond or recognizance delivered to him by the appellant.

SEC. 14. The court to which the appeal shall have been taken, upon evidence being given that an appeal has been duly made may, by rule and attachment, compel a return by the justice of his proceedings, and of all papers and matters required to be returned by him, during the same term, or at a subsequent term; and if a rule shall have been entered requiring such return, as hereinbefore authorized, and shall have been served ten days previously, the court shall issue an attachment against such delinquent justice, unless good cause to the contrary be shown by such justice. Return may be compelled.

SEC. 15. Upon satisfactory evidence that the return of a justice is substantially erroneous or defective, the court may, in like manner, compel him to amend the same. Amendment of return.

SEC. 16. Upon an attachment being issued against the justice, pursuant to either of the foregoing sections, the court may punish the disobedience of the justice by imprisonment, until he submit, and may adjudge that he pay the costs of the proceedings against him; and such order shall be enforced as other orders of the court. Punishment of disobedience of justice.

SEC. 17. On filing the return of the justice the circuit court shall become possessed of the cause the same as if it had been originally commenced in said appellate court, subject to the same rules and regulations, and for all fees and costs in the action in the appellate court, the bond of the appellant shall be holden as if made and filed in the action originally commenced in said appellate court, and the appellate court shall have power to order new bonds or require security for costs and make other orders in its discretion as in actions originally therein commenced. Proceedings on filing return.

SEC. 18. No appeal shall be dismissed on the ground that the costs of the justice have not been paid, but in all cases, the fact of a return having been made by a justice shall be conclusive evidence of such costs having been paid. No appeal dismisses for non-payment of costs.

SEC. 19. If an appeal be dismissed or discontinued, the court shall enter judgment in favor of the appellee for costs. Judgment for appellee.

SEC. 20. Upon an appeal being dismissed or discontinued, and a certified copy of the order of dismissal or discontinuance being served upon the justice, he shall proceed thereon as if no appeal had been made. Order of dismissal to be served on justice.

SEC. 21. The appellee in whose favor a judgment shall have been rendered shall not be entitled to prosecute the bond or recognizance given on appeal which shall have been dismissed or discontinued, until an execution on the judgment appealed from shall have been returned that sufficient goods and chattels of such appellant cannot be found to satisfy the same. Appellee not to prosecute bond till execution returned unsatisfied.

Of Certioraris.

**Certiorari
allowed.**

SEC. 22. In all cases of judgments rendered by a justice of the peace, whether issue was joined before the justice or not, either party may remove such judgment by a writ of certiorari, into the circuit court for the county in which the judgment was rendered.

**Notice in
writing.**

SEC. 23. The party intending to apply for such certiorari shall give the justice notice in writing within five days after the rendition of the judgment, of his intention of removing the cause to the circuit court by certiorari; and shall within ten days make or cause to be made an affidavit, setting forth the substance of the testimony and proceedings before the justice, and the grounds upon which an allegation of error is founded.

Affidavit.

**Who to allow
writ.**

SEC. 24. Such affidavit shall, within ten days after rendering such judgment, be presented to one of the circuit judges, or to a circuit court commissioner of any county of this State, and if he be satisfied that an error has been committed by the justice or jury in the proceedings, verdict or judgment, he shall allow the certiorari, by endorsing his allowance thereon.

Bond.

SEC. 25. The party obtaining such certiorari shall execute a bond to the opposite party, with one or more sufficient sureties, to be approved by the judge or commissioner who allowed the certiorari, or by the justice who rendered the judgment, in a penalty of at least fifty dollars, where the whole amount of the judgment for debt or damages and costs shall not exceed twenty-five dollars; and where the judgment for debt or damages and costs shall exceed the sum of twenty-five dollars, then the penalty of said bond shall be in double the amount of said judgment, if such judgment was rendered against the party applying for such certiorari, conditioned to prosecute such certiorari to effect and abide the judgment of the circuit court therein, and pay the debt or damages and costs that shall be awarded against him.

Sureties.

SEC. 26. The party procuring the certiorari need not execute the bond in the last section mentioned, if the same shall be executed by two or more sureties. The sufficiency of the surety or sureties shall be approved by the person allowing the certiorari, or the justice on whose judgment the certiorari is brought. No such bond shall be approved unless the surety or sureties thereto justify their pecuniary responsibility in writing and under oath, which said justification shall be by said justice or person allowing the certiorari endorsed on said bond, or the responsibility of such surety or sureties is admitted in writing by the opposite party or his attorney, and endorsed on said bond.

Justification.

**Penal sum
of bond.**

SEC. 27. If the judgment was in favor of the person applying for such certiorari, then such bond shall be in a penalty of at least fifty dollars, conditioned to pay such costs as shall be awarded against him, in case such judgment shall be affirmed.

SEC. 28. The affidavit, after the allowance of the certiorari shall have been indorsed thereon, and within five days after such allowance shall be filed in the office of the clerk of said circuit court, and thereupon a writ of certiorari shall be issued forthwith by such clerk. When writ to issue.

SEC. 29. Such writ of certiorari shall, within five days after it shall have been issued, or within such other time as the officer allowing the same shall direct at the time of allowing the certiorari, be served upon the justice by whom the judgment was rendered, together with the bond given, and a copy of the affidavit on which the certiorari was allowed; and the sum of two dollars shall be paid to the justice for his fees for making a return to the certiorari, and no certiorari shall be of any effect until all the preceding requirements shall have been complied with. Service of certiorari, etc.
Fee.

SEC. 30. If the certiorari, bond and copy of the affidavit shall be served on the justice before an execution shall have been issued, it shall stay the issuing of the same; and if the execution shall have been issued, but not collected, the justice shall grant the party requiring it a certificate of the issuing of such certiorari, which on being served on the officer in whose hands the execution may be, shall suspend such execution. Execution to be stayed.

SEC. 31. The justice before the return day of such certiorari, or within five days after the service thereof, shall make return thereto in writing, to which return shall be attached such writ, the bond and the copy of the affidavit on which such writ was allowed, and file the same in the office of the clerk of the court from which the writ issued; in which return he shall duly and fully answer all the facts set forth in the copy of the affidavit on which the writ was allowed. Justice to make return.

SEC. 32. The court may compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require. Court may compel return or amendment.

SEC. 33. When such return shall be so filed with the clerk the cause may be brought on for argument, on like notice as is required for the hearing of motions, without any assignment or joinder in error, unless there be an allegation of error in fact, and without furnishing any other copy or copies of the affidavit, certiorari and return to the court or the opposite party, than those filed with the clerk. When cause may be brought on for argument.

SEC. 34. The court shall proceed to give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections or defects in the proceedings before the justice, which did not affect the merits; and may affirm or reverse the judgment, in whole or in part, and execution shall issue thereon, as upon other judgments rendered in the circuit court. Judgment.

SEC. 35. If the judgment be affirmed, costs shall be awarded to the appellee; if it be reversed, costs shall be awarded to the appellant; if judgment be affirmed in part, the costs, or Costs.

such part as to the court shall seem just, may be awarded to either party.

No reversal
for certain
causes.

SEC. 36. No judgment of a justice shall be reversed merely for the omission or misrecital of an oath, nor on account of any fees having been improperly allowed by such justice, nor on account of the informality or insufficiency of any bond that shall have been given by the party bringing the certiorari: *Provided*, Another bond, to be approved by the court, shall be given within such time as the court shall direct.

Proviso,
new bond.

Return to
appeal after
expiration
of office.

SEC. 37. Whenever an appeal shall be duly made from a judgment rendered by a justice while in office, either before or after the justice shall have gone out of office, and before or after his books and papers shall have been delivered to the clerk of the township or city or to his successor in office, it shall be the duty of such justice to make return to such appeal, in like manner as if he were in office at the time of making such return.

Return by
successor.

SEC. 38. If a justice to whom a notice of appeal and bond or recognizance shall have been duly delivered, as hereinbefore provided, shall die, become insane, remove out of the State, or abscond, so that the return of such justice to the appeal cannot be compelled, the justice to whom his books and papers shall have been transferred, shall make and file with the clerk of the circuit court a transcript of the docket of the cause, together with all the papers relating thereto, and the circuit court shall proceed thereon in the same manner as if return had been made by the justice who rendered the judgment therein.

Expiration of
office during
time allowed
for appeal.

SEC. 39. If before the expiration of the time limited for appealing from any judgment rendered by a justice of the peace, the term of office of such justice shall expire, or his office otherwise become vacant, either party conceiving himself aggrieved by such judgment, may, within five days after the books and papers of such justice shall have been transferred to another justice, pursuant to the foregoing provisions, deliver a notice of appeal and bond or recognizance to the justice having control of such judgment, and pay him the fee hereinbefore provided; and such justice shall, within ten days thereafter, make return to such appeal in the same manner, and with the like effect, as if the judgment appealed from had been rendered by him.

When return
cannot be
compelled.

SEC. 40. If for any cause a return to an appeal cannot be compelled, the court to which such appeal shall be made, may receive the affidavits of witnesses and of the parties, to the facts and circumstances of the proceedings, and of the judgment appealed from, and shall proceed thereon in the same manner as if such facts had been returned by the justice whose duty it was to make return to such appeal.

Return com-
pelled after
removal from
county.

SEC. 41. If any justice whose duty it shall be to make return to any appeal, shall, before making such return according to law, remove out of the county into any other county in this State, the court to which such appeal shall be made

shall have power to compel a return of such appeal in the same manner as if such justice had not removed.

CHAPTER LXXIX.

Of Contempts.

SECTION 1. In the following cases a justice of the peace may punish, as for criminal contempt, persons guilty of the following acts: In what cases justice may punish for contempt.

1. Disorderly, contemptuous or insolent behavior towards such justice, while engaged in the trial of a cause, or in the rendering of any judgment, or in any judicial proceeding, which shall tend to interrupt such proceedings, or to impair the respect due to his authority;

2. Any breach of the peace, noise, or other disturbance, tending to interrupt any judicial proceedings of a justice;

3. Resistance wilfully offered by any person in the presence of a justice, to the execution of any lawful order or process made or issued by him.

SEC. 2. Punishment for contempts, in the foregoing cases, may be by fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding five days, or both, in the discretion of the justice; but no person shall remain imprisoned for the non-payment of such fine more than ten days. Punishment.

SEC. 3. No person shall be punished for a contempt before a justice until an opportunity shall have been given him to be heard in his defense; and for that purpose, a justice may issue a warrant to bring the offender before him; or, if the contempt was committed in the presence of the justice, he may cause the offender forthwith to be arrested therefor, without issuing any process in the first instance. Opportunity to be heard.

SEC. 4. Upon convicting any person of contempt, the justice shall make a record of such conviction, stating therein the particular circumstances of the offense; and the warrant of commitment for any contempt shall also state the circumstances of the offense, or it shall be void. Record of conviction. Warrant for commitment.

SEC. 5. When a witness attending before any justice in the cause, shall refuse to be sworn in the form prescribed by law, or to answer any pertinent or proper question, such justice may by warrant commit such witness to the jail of the county. Commitment of witness for refusal to swear or answer.

SEC. 6. Such warrant shall specify the cause for which the same is issued, and if it be for refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such warrant until he submit to be sworn, or to answer, as the case may be. Warrant, what to specify.

SEC. 7. The justice shall thereupon adjourn such cause at the request of the party in whose favor such witness attended, from time to time, until such witness shall testify in the cause, or be dead, or otherwise incapable of testifying as a witness. Adjournment of cause.

CHAPTER LXXX.

General Provisions.

Justice to
preserve, etc.,
papers, etc.

SECTION 1. Every justice shall carefully preserve and file all affidavits and papers delivered to him to be filed in any cause.

Index of
judgments
in docket.

SEC. 2. Every justice shall keep an alphabetical index of all judgments entered in his docket book, in the course of any judicial proceeding had before him, in which shall be inserted the names of the parties to each judgment, and the page of his docket where such judgment is entered.

Justice's
docket.

SEC. 3. Every justice of the peace shall keep a docket, in which he shall enter:

1. The title of all causes commenced before him;
2. The time when the first and subsequent process was issued against the defendant, and the particular process issued;
3. The time when the parties appeared before him, either without process, or on the return of process;
4. When the pleadings are made orally, a concise statement of the declaration of the plaintiff, the plea of the defendant, the further pleadings of the parties, if any, and the issue joined;
5. Every adjournment, stating on whose motion, and to what time and place;
6. The issuing of a venire, stating at whose request, and the time and place of its return;
7. The time when a trial was had, the names of the jurors returned summoned who did not appear, and the fines imposed upon them, if any;
8. The names of the jurors who appeared and were sworn, the names of the witnesses sworn at the request of either party, stating at whose request; the objections, if any, made to the competency of a witness, and the decision thereon;
9. The verdict of the jury, and when received;
10. The judgment rendered by the justice, and the time of rendering the same;
11. If the judgment was for the personal services of the plaintiff, or any member of his family, the judgment shall so state;
12. The time of issuing execution, and the name of the officer to whom delivered;
13. The return of every execution, and when made;
14. The fact of an appeal having been made from any judgment rendered by him, and the time when made;
15. The fact of his having given a transcript of the judgment to be filed in the clerk's office, and the time when the same was given.

Entry of
items.

SEC. 4. The several items in the preceding section enumerated shall be entered under the title of each cause to which they respectively relate; and in addition thereto, the justice

may enter any other proceedings had before him in such cause, which he shall think it useful to enter in such docket.

SEC. 5. When the same justice shall be re-elected and qualified to fill the vacancy occasioned by the expiration of his own term of office, his authority shall be considered as having continued without interruption; and all business commenced by or before him during his former term of office, may be prosecuted and completed in the same manner as if such former term had not expired.

Re-election and qualification.

SEC. 6. When the term of office of a justice shall expire, if his successor shall be elected and qualified, he shall forthwith deliver over to such successor all the books and papers relating to his office as a justice of the peace.

When to deliver over books and papers.

SEC. 7. Whenever any justice shall be removed from office, or shall remove out of the township or city in which he was elected, or his office shall in any way become vacant, except by death, if his successor in office be not elected and qualified, such justice, or the person in whose possession the same may be, shall, within ten days after such vacancy shall happen, deliver to the township or city clerk all the books and papers in his custody relating to his office as a justice of the peace; and whenever such vacancy shall happen by the division or any alteration of the boundary of a township or city, said books and papers shall be delivered to the clerk of the township or city in which is the last place of residence, prior to such vacancy of such justice; and whenever any justice shall be sick, and thereby unable to perform his judicial duty, or shall be temporarily absent from the county, it shall be lawful for any other justice of the township or city in which he resides to take temporary possession of his docket, and to make out and issue, upon application by the proper party, any execution due upon any judgment duly entered therein, or to make out and deliver, on application by the proper party, a transcript of any judgment duly entered therein.

When books, etc., to be delivered to clerk.

Sickness, etc., of justice.

SEC. 8. In case any justice shall die, and any books or papers belonging to such justice in his official capacity, shall come to the hands of any person, the township, or city clerk may demand and receive such books and papers from the person having the same in his possession; and it shall be the duty of every such person, within ten days after any such books or papers shall come to his possession, whether demanded or not, to deliver the same to the township or city clerk.

On death of justice, books and papers to be delivered to clerk.

SEC. 9. Whenever any township or city clerk shall receive the books and papers of any justice of the peace, as hereinbefore provided, he shall within ten days from the time he receives the same, deliver them over to some other justice of the same township or city, who shall deliver the same over to the justice elected to fill such vacancy, within ten days after the election and qualification of said justice.

Disposition of books and papers.

Justice to whom books, etc., are delivered to continue proceedings, etc.

SEC. 10. Whenever the office of any justice shall become vacant by resignation, removal or otherwise, and there shall be pending before him any matter or suit undetermined, and the books and papers of such justice shall be delivered over to any other justice of the city or township, pursuant to the foregoing provisions, the justice to whom such books and papers shall be so delivered, shall proceed to hear, try, and determine such matter or suit, and to issue execution thereon, in the same manner and with the like effect as he might have done if such matter or suit had been originally commenced before him.

Justice may issue execution.

SEC. 11. The justice to whom the books and papers of another justice shall have been transferred as hereinbefore provided, may issue execution upon any judgment appearing upon the books so transferred, in the same manner, and with the like effect as if such judgment had been rendered by him.

Constable not to take reward.

SEC. 12. No constable shall ask or receive any money or other valuable thing from a defendant or other person, as a consideration, reward or inducement for omitting to arrest any delinquent, or to carry him before any justice, or for delaying to take any party to prison, or for postponing the sale of any property under any execution, or for omitting or delaying the execution of any duty pertaining to his office.

Justice or constable not to be interested in bond, etc., for purpose of suing, etc.

SEC. 13. No justice of the peace or constable shall directly or indirectly, buy or be interested in buying any bond, note, or other demand or cause of action, for the purpose of commencing any suit thereon before a justice; nor shall any justice or constable, either before or after suit brought, lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money or valuable thing, to any person in consideration of, or as a reward for, or inducement to, the placing or having placed in the hands of such justice or constable, any debt, demand or cause of action whatever, for prosecution or collection.

No justice to purchase judgment, etc.

SEC. 14. No justice of the peace shall purchase, directly or indirectly, or be interested in the purchase of any judgment rendered by him.

Penalty for violating last three sections.

SEC. 15. Every justice or constable, offending against either of the provisions of the three last preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the court; and every such conviction shall operate as a forfeiture of the office of the justice or constable so convicted.

Forfeiture of office.

Special acts not affected.

SEC. 16. Nothing in this act contained shall change or limit the jurisdiction or other provisions relating to justice courts prescribed by law or by the charter of any incorporated city.

CHAPTER LXXXI.

Of Laws Repealed and Excepted From Repeal.

SECTION 1. Chapters twenty and twenty-one with the exception of section two hundred twenty-nine; chapters twenty-two, twenty-three, twenty-four and twenty-five with the exception of section three hundred nine; chapter twenty-six with the exception of sections three hundred forty-seven and three hundred forty-nine to three hundred fifty-five inclusive; chapters twenty-seven, twenty-nine, thirty-three and thirty-four with the exception of sections seven hundred seven and eight hundred twenty; chapters thirty-five, thirty-seven, thirty-eight, forty and one hundred eighty-nine with the exception of sections seven thousand one hundred five to seven thousand one hundred fifteen inclusive; chapters two hundred thirty-four, two hundred thirty-six and two hundred forty-three to two hundred forty-six inclusive; chapters two hundred forty-nine to two hundred fifty-six inclusive; chapter two hundred sixty with the exception of sections nine thousand five hundred fifty and nine thousand five hundred fifty-two; chapters two hundred sixty-one to two hundred sixty-five inclusive; chapters two hundred sixty-seven to two hundred seventy-two inclusive; chapters two hundred seventy-four, two hundred seventy-five, two hundred seventy-six and two hundred seventy-seven with the exception of sections ten thousand fifteen to ten thousand twenty-one inclusive; chapters two hundred seventy-nine to two hundred eighty-two inclusive; chapter two hundred eighty-three with the exception of sections ten thousand two hundred thirty-eight, ten thousand two hundred forty-three, ten thousand two hundred forty-four, ten thousand two hundred forty-six and ten thousand two hundred forty-seven; chapters two hundred eighty-four to two hundred eighty-seven inclusive; chapter two hundred eighty-eight with the exception of sections ten thousand three hundred ninety-six, ten thousand four hundred twenty-seven, ten thousand four hundred twenty-eight, ten thousand four hundred twenty-nine, ten thousand four hundred thirty-two and ten thousand four hundred forty-nine to ten thousand four hundred fifty-three inclusive; chapter two hundred eighty-nine with the exception of sections ten thousand four hundred eighty-four, ten thousand four hundred eighty-nine, ten thousand four hundred ninety, ten thousand four hundred ninety-one and ten thousand five hundred four; chapters two hundred ninety-two, two hundred ninety-three, two hundred ninety-four, two hundred ninety-nine, three hundred, three hundred one, three hundred three, three hundred four, three hundred eight, three hundred nine and three hundred ten with the exception of section eleven thousand two hundred four; chapter three hundred eleven with the exception of sections eleven thousand two hundred twenty-one, eleven thousand two hundred twenty-three, eleven thousand two hundred twenty-five,

Chapters and sections of compiled laws repealed.

eleven thousand two hundred twenty-seven, eleven thousand two hundred thirty, eleven thousand two hundred thirty-one, eleven thousand two hundred thirty-two and eleven thousand two hundred fifty to eleven thousand two hundred fifty-three inclusive, and chapter three hundred twelve with the exception of sections eleven thousand three hundred and eleven thousand three hundred one of the Compiled Laws of eighteen hundred ninety-seven; sections two thousand four hundred forty-five, two thousand four hundred forty-seven, two thousand four hundred forty-nine, two thousand four hundred fifty-one, two thousand four hundred fifty-three, two thousand four hundred sixty-six, two thousand four hundred sixty-seven, two thousand four hundred sixty-eight, two thousand four hundred seventy, two thousand four hundred seventy-one, two thousand five hundred forty-nine to two thousand five hundred fifty-five inclusive, two thousand five hundred eighty-five, two thousand five hundred eighty-six, two thousand six hundred four, two thousand six hundred nine, two thousand six hundred forty, two thousand six hundred seventy-three, two thousand six hundred ninety-six, two thousand nine hundred forty-eight, three thousand three hundred sixty-five, three thousand seven hundred seventeen, four thousand seven hundred twenty-one, four thousand seven hundred twenty-two, four thousand eight hundred sixty-five, five thousand two hundred sixty-three, five thousand nine hundred sixteen, six thousand one hundred thirty-seven, six thousand one hundred sixty-seven, six thousand four hundred fifty-four, six thousand four hundred seventy-seven, six thousand five hundred thirty-eight, six thousand six hundred forty, six thousand six hundred seventy-eight, six thousand six hundred ninety-two, six thousand seven hundred forty-eight, six thousand eight hundred five, six thousand eight hundred twenty-two, six thousand nine hundred eighty-one, seven thousand twenty-seven, seven thousand four hundred seventy-one, seven thousand six hundred thirty-six, eight thousand one hundred forty-nine, eight thousand two hundred twenty-two, eight thousand four hundred forty-four, eight thousand five hundred forty-three, eight thousand five hundred forty-four, eight thousand five hundred eighty, eight thousand five hundred eighty-one, eight thousand five hundred eighty-two, eight thousand nine hundred fifty-five, eight thousand nine hundred ninety, nine thousand forty-six, nine thousand forty-seven, nine thousand fifty-four, nine thousand fifty-seven, nine thousand two hundred seventy-eight to nine thousand two hundred eighty-one inclusive, nine thousand two hundred eighty-nine, nine thousand nine hundred nineteen, ten thousand forty-six, ten thousand five hundred forty-nine, ten thousand five hundred fifty-two, ten thousand five hundred fifty-three, ten thousand five hundred fifty-four, ten thousand seven hundred forty, ten thousand seven hundred forty-one, ten thousand seven hundred forty-two, ten thousand nine hundred twenty-four, eleven thousand one hundred twenty-two, eleven thousand one hun-

dred twenty-three, and eleven thousand one hundred twenty-seven to eleven thousand one hundred thirty-two inclusive, of said Compiled Laws of eighteen hundred ninety-seven; acts ninety, one hundred fifty-five, one hundred ninety-seven and one hundred ninety-nine, section two of act two hundred nineteen, section eleven of act two hundred twenty-five, sections one, two, three, five, eight, nine, ten, eleven, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-five, twenty-nine, thirty-two, thirty-three, thirty-five, thirty-seven, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five and forty-six of act two hundred fifty-three, and act two hundred sixty of the Public Acts of eighteen hundred ninety-nine; section three of act fifty-nine, and acts forty, sixty-three and two hundred eight, of the Public Acts of nineteen hundred one; act one hundred fifty-three, section five of act one hundred sixty-eight, section forty-two of act two hundred seventeen, and section thirty of act two hundred thirty-two, of the Public Acts of nineteen hundred three; act one hundred seventy-five, section two of act two hundred eighteen, section seventeen of act two hundred eighty-three, and act three hundred ten, of the Public Acts of nineteen hundred five; acts forty-six, seventy-five and two hundred seventy-one, of the Public Acts of nineteen hundred seven; acts sixty and seventy-three, section thirty-one of act one hundred one, section five of act one hundred four, sections one, two, three, four, five and eight of act one hundred twenty-three, act one hundred thirty-six, sections three and four of act two hundred nine, act two hundred forty, section ten of act two hundred sixty-five, sections one, two, four, five, six and seven of act two hundred ninety nine; act three hundred eleven, act three hundred fifteen of the Public Acts of nineteen hundred nine; acts one hundred sixty-seven, one hundred ninety-five, two hundred twenty-seven and two hundred thirty-two, section two of act two hundred thirty-three, and sections one, two, four and five of act two hundred sixty-seven, of the Public Acts of nineteen hundred eleven; and sections one, two, three, four and six of act ninety-four, act one hundred sixty-three, acts two hundred thirty-seven, three hundred seventy-six, three hundred ninety-six, and section seventeen of act three hundred ninety-eight, of the Public Acts of nineteen hundred thirteen, with all amendments to said chapters, sections and acts and all acts or parts of acts inconsistent with or contravening the provisions of this act, including inconsistent or contravening provisions contained in the sections above excepted, are hereby repealed except in so far as the same are herein re-enacted.

Public acts
repealed.

Inconsistent
acts, sections,
etc.

SEC. 2. Actions in special cases, and special proceedings provided for in the tax laws of this State, in the drain laws; in the election laws; in the laws relating to the commitment, confinement and treatment of insane and mentally defective persons; in the laws relating to the commitment, confinement and treatment of the feeble-minded and epileptic; in the laws

Special
proceedings
retained.

Proviso,
certain
sections
applicable.

relating to the commitment and confinement of persons in the State schools, hospitals or sanitariums; in the laws relating to dependent, neglected and delinquent children; in the laws relating to separate maintenance, divorce and the annulment and affirmance of marriage; in the laws relating to the foreclosure of liens of mechanics and others upon real estate; in the laws relating to liens upon personal property; in the laws relating to the enforcement of claims against watercraft; in the laws relating to condemnation proceedings; in the law relating to actions for waste; in the laws relating to vacating cemeteries; and in all other laws relating to actions in special cases and special proceedings, the subject matter of which is not embraced within the provisions of this act, and not specifically repealed, are not to be deemed repealed or superseded by this act, but the same are retained, and the procedure therein shall be as in such laws provided: *Provided, however,* That in such actions and proceedings the provisions of section sixty-five of chapter two; of section one of chapter twelve; of section five of chapter thirteen, and of section five of chapter fourteen of this act shall be applicable.

SEC. 3. This act shall take effect and be in force on and after January one, nineteen hundred sixteen.

Approved May 18, 1915.

**OTHER ACTS AFFECTING PRACTICE
AND PROCEDURE.**

OTHER PRACTICE ACTS OF 1915

[No. 123.]

AN ACT to provide for the recording of affidavits as to the birth, marriage, death, name, identity or relationship of parties to instruments affecting real estate and the use of the same in evidence.

The People of the State of Michigan enact:

SECTION 1. Affidavits as to the birth, marriage, death, name, residence, identity and relationship of parties named in deeds, wills, mortgages and other instruments affecting real estate may be recorded in the office of the register of deeds of the county where said real estate is situate. Record of affidavits.

SEC. 2. It shall be the duty of the register of deeds for the county where such affidavit is offered for record to receive the same and cause the same to be recorded in the same manner that deeds are recorded. The register of deeds shall collect the same fees for recording such affidavit as are provided by law for recording deeds. Duty of register.
Fees.

SEC. 3. Such affidavits, whether recorded before or after the passage of this act, may be received in evidence in any civil cause, in all courts of this State and by all boards or officers of the State in all suits or proceedings affecting such real estate and shall be prima facie evidence of the facts and circumstances therein contained. Evidence in civil causes.

Section 3 is superseded by sections 19, 20 and 21, of chapter 17 of the Judicature act of 1915.

[No. 200.]

AN ACT to prevent plaintiffs in civil actions from discontinuing or submitting to non-suit after the defendant has entered upon his defense and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

SECTION 1. That in any civil action hereafter commenced in this State, whenever the defendant shall have entered upon When plaintiff not to dis-continue.

his defense to the action in open court, the plaintiff shall not be allowed to discontinue his suit or submit to a non-suit without the consent of the defendant.

SEC. 2. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved May 11, 1915.

[No. 213.]

AN ACT to provide for a presiding circuit judge and for the manner of his selection, to prescribe his powers and duties and to defray the expenses incident thereto.

The People of the State of Michigan enact:

Election.

SECTION 1. On the first Thursday of September after this bill takes effect and thereafter on the first Thursday of September of each succeeding year, the circuit judges of the State shall meet in the city of Lansing and shall elect one of their number presiding circuit judge for the ensuing year commencing on the first day of January thereafter. In case of the death, removal or disability of said presiding circuit judge, the Governor shall designate a presiding circuit judge to serve for the unexpired term.

Power of judge.

SEC. 2. The presiding circuit judge shall have full directory power over the matter of apportioning the work of the several circuits among the circuit judges of the State.

Expenses, how paid.

SEC. 3. The circuit judges of the State shall be paid from the treasury their necessary and actual expenses in attending the annual meeting for the election of a presiding circuit judge, in the manner now provided by law for the payment of their expenses in holding court in counties other than where they reside: *Provided*, That whenever a judge of any circuit shall hold court in any other circuit he shall be paid by the State the same salary for the time he serves that is paid to the judge of the circuit to which he is called, and the necessary expenses of the presiding circuit judge shall be paid in the same manner.

Proviso, salary.

Necessary expenses.

Approved May 13, 1915.

[No. 217.]

AN ACT to provide for the entering of judgment, notwithstanding the verdict in certain cases and to prescribe the practice in such cases upon review by supreme court, and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

SECTION 1. Hereafter in all civil actions at law, in courts of record, if either party shall at the close of the testimony, and before the case is submitted to the jury, request the court for a directed verdict in his favor, the court may reserve his decision thereon, and submit the case to the jury under proper instructions as to the law applicable to such case. After the case is thus submitted to the jury, or after receiving and recording the verdict of the jury and before judgment is entered in said case, the court may hear arguments of counsel for and against said request, but in all such cases shall receive and record the verdict of the jury as rendered. If the court shall then decide as a matter of law, that the party requesting the directed verdict was entitled thereto, and if the verdict of the jury is adverse to the party making such request, the court shall enter its decision on the record and order judgment in accordance with such decision notwithstanding the verdict entered, and the party against whom such judgment is entered shall have an exception to such action of the court as a matter of course. If such request is denied an exception in favor of the party making such request shall follow as a matter of course.

Motion for directed verdict.

Argument.

Judgment notwithstanding verdict.

Exception.

SEC. 2. If the party against whom the verdict of the jury was rendered shall take an appeal to the supreme court either by writ of error or certiorari, and shall properly assign error upon the refusal of the trial court to direct a verdict in his favor or to order judgment entered notwithstanding the verdict, as provided in the preceding section, and the supreme court shall be of the opinion that the trial court committed error in not directing verdict as requested or in not entering judgment notwithstanding the verdict, the supreme court shall reverse the decision of the trial court in that regard and shall order judgment notwithstanding the verdict entered accordingly, unless it shall appear from the record that there was such error on the trial as would have entitled the party in whose favor the verdict of the jury was rendered, to a new trial if such verdict and judgment had been adverse to such party, in which case a new trial shall be ordered. If the party in whose favor the verdict of the jury was rendered shall appeal from the order of the trial court entering judgment notwithstanding the verdict and shall properly assign error thereon, and the supreme court shall be of the opinion that the trial court committed error

Appeal to supreme court.

Reversal.

New trial.

Judgment.

in ordering judgment notwithstanding the verdict entered, the supreme court shall reverse such order of the trial court and shall order judgment entered in accordance with the verdict of the jury as rendered, unless it shall appear from the record that there is error in the case that would have entitled the party in whose favor judgment notwithstanding the verdict was entered, to a new trial if such judgment had not been entered by the trial court in which case a new trial shall be ordered.

Supreme court to adopt rules.

SEC. 3. As soon as practicable after the passage of this act, the supreme court shall adopt such rules of practice as may be necessary to carry out the provisions of this act.

SEC. 4. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved May 13, 1915.

[No. 242.]

AN ACT to provide for the conduct of suits pending in chancery in cases of death of a judge before decree and after a finding or decision disposing of all or part of the issues.

The People of the State of Michigan enact:

Death of judge before signing decree.

SECTION 1. In all suits in chancery now or hereafter pending in any circuit court of this State when a circuit judge thereof has died, or shall die, before signing a final decree and after filing a finding of fact or rendering an opinion upon proofs submitted and arguments of counsel disposing of all or part of the issues therein involved, his successor shall be and he is hereby authorized and empowered to proceed with said suit, in a manner consistent with said finding or opinion, and he is hereby given the same powers that he would have had if said finding of fact had been made or said opinion had been rendered by said successor himself.

Successor to proceed with suit.

Approved May 17, 1915.

[No. 256.]

AN ACT to bar debts and obligations against unprobated estates of deceased persons, after the lapse of a certain length of time in certain cases, and to repeal all acts or parts of acts in conflict with the provisions of this act.

The People of the State of Michigan enact:

When claim against estate barred.

SECTION 1. All debts and obligations contracted by any person in his lifetime or any debt and obligation for which he was liable in his lifetime or for which his estate has be-

come liable shall be barred after ten years from the date of his death, unless presented to the probate court in accordance with the rules of practice of said court, or unless sooner barred by law, notwithstanding that no proceedings shall have been taken to probate such estate: *Provided*, That in case any decedent shall have been deceased ten years or more before this act shall take effect leaving any debt or obligation unsatisfied and not otherwise barred by law, the owner of the debt or obligation may present such debt or obligation against the estate of such deceased person in the probate court within six months after this act shall take effect, or such debt or obligation shall be forever barred.

Proviso, six months allowed for presentation.

SEC. 2. All acts or parts of acts in conflict with any of the provisions of this act are hereby repealed.

Approved May 17, 1915.

[No. 272.]

AN ACT to provide for procedure in courts of chancery to enjoin and abate houses of lewdness, assignation and prostitution; to declare the same to be nuisances; to enjoin the person or persons who conduct or maintain the same and the owner, or agent thereof, of any premises used for such purposes; to prescribe penalties for the violation of the provisions of this act; to provide for contempt proceedings for disregard or violation of any order or decree of abatement or injunction issued in proceedings under this act, and providing for the forfeiture of the benefits of property exemptions in the enforcement of orders, decrees or writs of execution made or issued by virtue of this act.

The People of the State of Michigan enact:

SECTION 1. Whoever shall conduct, maintain, own or lease any building or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building or place in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, and the furniture, fixtures, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Houses of assignation, etc., declared nuisance.

SEC. 2. Whenever a nuisance is kept, maintained or exists, as defined in this act, the prosecuting attorney or any citizen of the county may maintain an action in chancery in the name of the State of Michigan, upon the relation of such prosecuting attorney or citizen to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or place where said nuisance exists. Four days' notice in writing shall be given the defendant of the hearing of the applica-

How may be enjoined.

Notice in writing.

Injunction binding.	tion, and if then continued at his instance, the writ as prayed shall be granted as a matter of course. When an injunction has been granted, it shall be binding on the defendant throughout the judicial circuit in which it was issued.
Evidence of reputation.	SEC. 3. In such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existing of said nuisance. The court may substitute the prosecuting attorney for the complaining party and direct him to prosecute said action to judgment. If the action is brought by a citizen other than the prosecuting attorney and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen.
Prosecuting attorney as complainant.	
Costs.	
Violation of injunction.	SEC. 4. In case of the violation of any injunction granted under the provisions of this act, the court may summarily try and punish the offender as for contempt, and the person so offending shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not more than six months or by both fine and imprisonment in the discretion of the court.
Penalty.	
Order of abatement.	SEC. 5. If the existence of the nuisance be established in an action as provided in this act, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all furniture or contents used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released by said court. If any person shall break and enter or use a building or place so directed to be closed, he shall be punished as for contempt as provided in the preceding section. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. Any person found guilty of maintaining a nuisance under the provisions of this act shall forfeit the benefit of all property exemptions so far as the satisfaction of the order, decree or writ of said court requires the same and the taking and disposition of any property of the defendant or defendants by virtue of such order, decree or writ by any officer directed to execute the same shall not be deemed a trespass, nor shall such officers be liable either civilly or criminally therefor, provided a proper return of such order, decree or writ and accounting for such property shall have been made to the court within ten days after such order, decree or writ, has been executed.
Building to be closed for year.	
Officer's fees.	
Exemptions forfeited.	
Taking property not deemed trespass.	
Disposition of proceeds.	SEC. 6. The proceeds of the sale of the personal property, as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant.
Order of abatement, when canceled.	SEC. 7. If the owner of such building or place pays all costs of the proceeding, and files a bond with sureties ap-

proved by the circuit judge in the full value of the property, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court may, order such premises to be delivered to said owner and said order of abatement cancelled so far as the same may relate to said property; and if said bond be given and costs therein paid before judgment, and order of abatement, the action shall be thereby abated as to said building only.

SEC. 8. The court having jurisdiction of any proceedings under this act may make such further and other order in the premises as may be agreeable to equity, as in other chancery proceedings, not inconsistent with the provisions hereof; and the rules of procedure and evidence not herein otherwise prescribed, authorized or customary in chancery courts, shall apply in all cases brought under this act. Further order.
Procedure, etc. applicable.

Approved May 18, 1915.

[No. 280.]

AN ACT to establish the validity and to provide for the administration and control of gifts, grants, bequests and devises to religious, educational, charitable or benevolent uses, or for cemeteries, whether in trust or otherwise, which would be otherwise invalid by reason of indefiniteness or uncertainty of the object of such trust or of the persons designated as the beneficiaries thereunder in the instrument creating the same or by reason of contravening any statute or rule against perpetuities; and regulating the same; to establish the validity of all gifts, grants, devises or bequests made in pursuance of act one hundred twenty-two of the Public Acts of nineteen hundred seven and of the acts amendatory thereof, and all proceedings and acts performed in accordance therewith; and repealing act one hundred twenty-two of the Public Acts of nineteen hundred seven, and all amendments thereto.

The People of the State of Michigan enact:

SECTION 1. No gift, grant, bequest or devise, whether in trust or otherwise to religious, educational, charitable or benevolent uses, or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, or anything therein contained which shall in other respects be valid under the laws of this State, shall be invalid by reason of the indefiniteness or uncertainty of the object of such trust or of the persons designated as the beneficiaries thereunder in the instrument creating the same, nor by reason of the same contravening any statute or rule Certain trusts not invalid.

Title to vest in trustee.	against perpetuities. If in the instrument creating such a gift, grant, bequest or devise, there is a trustee named to execute the same, the legal title to the lands or property given, granted, devised or bequeathed for such purposes, shall vest in such trustee. If no such trustee shall be named in said instrument or if a vacancy occurs in the trusteeship, then the trust shall vest in the court of chancery for the proper county, and shall be executed by some trustee appointed for that purpose by or under the direction of the court; and said court may make such orders or decrees as may be necessary to vest the title to said lands or property in the trustee so appointed.
When trust to vest in court of chancery.	
Jurisdiction of court.	SEC. 2. The court of chancery for the proper county shall have jurisdiction and control over the gifts, grants, bequests and devises in all cases provided for by section one of this act. Every such trust shall be liberally construed by such court so that the intentions of the creator thereof shall be carried out whenever possible. The prosecuting attorney of the county in which the court of chancery shall have jurisdiction and control shall represent the beneficiaries in all cases where they are uncertain or indefinite, and it shall be his duty to enforce such trusts by proper proceedings in the court, but he shall not be required to perform any duties in connection with such trusts in any court outside of this State.
Construction of trust.	
Duty of prosecuting attorney.	
Gifts, etc., validated.	SEC. 3. All gifts, grants, devises or bequests made in pursuance to the provisions of act number one hundred twenty two of the Public Acts of nineteen hundred seven and of the acts amendatory thereof, and all proceedings and acts performed in accordance therewith are hereby validated. SEC. 4. Act one hundred twenty-two of the Public Acts of nineteen hundred seven and all amendments thereto are hereby repealed. Approved May 18, 1915.

[No. 283.]

AN ACT to amend section ninety-seven of chapter ninety of title twenty-one of the Revised Statutes of eighteen hundred forty-six of the State of Michigan, being compiler's section number five hundred two of the Compiled Laws of the State of Michigan of eighteen hundred ninety-seven, relating to the powers of courts of chancery to stay proceedings at law.

The People of the State of Michigan enact:

Section amended.	SECTION 1. That section ninety-seven of chapter ninety of title twenty-one of the Revised Statutes of eighteen hundred forty-six of the State of Michigan, being compiler's section
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number five hundred two of the Compiled Laws of eighteen hundred ninety-seven of the State of Michigan, relating to the powers of courts of chancery to stay proceedings at law, be and the same is hereby amended so as to read as follows:

SEC. 97. No injunction shall issue to stay the trial of any personal action in a court of law, until the party applying therefor shall execute a bond, with one or more sufficient sureties, to the plaintiff in such action at law in such sum as the circuit judge or other officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff, or his legal representatives, of all moneys which may be recovered by such plaintiff, or his representatives, or the collection of which may be stayed by such injunction in such action at law for debt or damages and for costs therein; and also for the payment of such costs as may be awarded to them in the court in chancery, in the suit in which such injunction shall issue; but no writ of injunction shall issue from any court of this State which will operate to stay any suit or proceeding pending in any court of the United States, or in any other court of this State, except it be issued by a judge of the court having the same territorial jurisdiction as the court in which such suit or proceeding is pending.

No injunction without bond.

Condition.

Certain injunctions not to issue.

SEC. 2. That all acts or parts of acts inconsistent with or contravening the provisions of this act are hereby repealed.
Approved May 18, 1915.

Title to vest in trustee.	against perpetuities. If in the instrument creating such a gift, grant, bequest or devise, there is a trustee named to execute the same, the legal title to the lands or property given, granted, devised or bequeathed for such purposes, shall vest in such trustee. If no such trustee shall be named in said instrument or if a vacancy occurs in the trusteeship, then the trust shall vest in the court of chancery for the proper county, and shall be executed by some trustee appointed for that purpose by or under the direction of the court; and said court may make such orders or decrees as may be necessary to vest the title to said lands or property in the trustee so appointed.
When trust to vest in court of chancery.	
Jurisdiction of court.	SEC. 2. The court of chancery for the proper county shall have jurisdiction and control over the gifts, grants, bequests and devises in all cases provided for by section one of this act. Every such trust shall be liberally construed by such court so that the intentions of the creator thereof shall be carried out whenever possible. The prosecuting attorney of the county in which the court of chancery shall have jurisdiction and control shall represent the beneficiaries in all cases where they are uncertain or indefinite, and it shall be his duty to enforce such trusts by proper proceedings in the court, but he shall not be required to perform any duties in connection with such trusts in any court outside of this State.
Construction of trust.	
Duty of prosecuting attorney.	
Gifts, etc., validated.	SEC. 3. All gifts, grants, devises or bequests made in pursuance to the provisions of act number one hundred twenty two of the Public Acts of nineteen hundred seven and of the acts amendatory thereof, and all proceedings and acts performed in accordance therewith are hereby validated.
	SEC. 4. Act one hundred twenty-two of the Public Acts of nineteen hundred seven and all amendments thereto are hereby repealed.
	Approved May 18, 1915.

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The People of the State of Michigan enact:

Section amended.

SECTION 1. That section ninety-seven of chapter ninety of title twenty-one of the Revised Statutes of eighteen hundred forty-six of the State of Michigan, being compiler's section

number five hundred two of the Compiled Laws of eighteen hundred ninety-seven of the State of Michigan, relating to the powers of courts of chancery to stay proceedings at law, be and the same is hereby amended so as to read as follows:

SEC. 97. No injunction shall issue to stay the trial of any personal action in a court of law, until the party applying therefor shall execute a bond, with one or more sufficient sureties, to the plaintiff in such action at law in such sum as the circuit judge or other officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff, or his legal representatives, of all moneys which may be recovered by such plaintiff, or his representatives, or the collection of which may be stayed by such injunction in such action at law for debt or damages and for costs therein; and also for the payment of such costs as may be awarded to them in the court in chancery, in the suit in which such injunction shall issue; but no writ of injunction shall issue from any court of this State which will operate to stay any suit or proceeding pending in any court of the United States, or in any other court of this State, except it be issued by a judge of the court having the same territorial jurisdiction as the court in which such suit or proceeding is pending.

No injunction without bond.

Condition.

Certain injunctions not to issue.

SEC. 2. That all acts or parts of acts inconsistent with or contravening the provisions of this act are hereby repealed.
Approved May 18, 1915.

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